TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted], 1914

No. [redacted] 135

WILSON CYPRESS COMPANY, APPELLANT,

vs.

ENRIQUE DEL POZO Y MARCOS ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED MARCH 31, 1913.

(23,605)

(23,605)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1030.

WILSON CYPRESS COMPANY, APPELLANT,

vs.

ENRIQUE DEL POZO Y MARCOS ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings Had and Done at a Regular Term of the United States Circuit Court of Appeals for the Fifth Circuit, Begun on Thursday, the Twenty-first Day of November, A. D. 1912, at New Orleans, Louisiana, Before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable William I. Grubb, District Judge:

WILSON CYPRESS COMPANY, Appellant,
versus
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Be it remembered, That heretofore, to-wit, on the 17th day of April, 1912, a transcript of the record in the above styled cause, pursuant to an appeal from the District Court of the United States for the Southern District of Florida, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2354, as follows:

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

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WILSON CYPRESS COMPANY, Appellant,
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CAPTION.

BE IT REMEMBERED, That at a Term of the United States District Court in and for the Southern District of Florida, Begun and Held December 4th, A. D. 1911, Honorable James W. Locke, District Judge, Presiding, at Jacksonville, in Said District, the Following Recited Proceedings Were Had and Enacted in the Following Entitled Cause, Viz:

ENRIQUE DEL POZO Y MARCOS AND OTHERS

versus No. 21. C. C.

WILSON CYPRESS COMPANY.

In Chancery.

In the United States Circuit Court in and for the Southern District of Florida, in Chancery.

To the Judges of the Circuit Court of the United States for the Southern District of Florida:

Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Cristina del Pozo y Marcos, by her husband, Alejandro Nunez Villavicencio y Alvarez, her next friend, Maria Piler Marcos y Pozo, by her husband, Ysidro

Martin Martinez y Sanchez, her next friend, Felix Genaro Marcos y Diaz, Adelida Garcia y Pechardo, widow of Urbana Codina, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Carmen Garcia y Pechardo, by Ysidro Zertucha, her husband and next friend, Rafaela Garcia y Pechardo, by Maximo Zertucha, her husband and next friend, Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvasses, otherwise called Alvarez, Alfonso Garcia y Pechardo, Ricardo Garcia Alvasses; Margarita Alvasses de Garcia, widow, Ricardo Alvasses Garcia, Alfonso Alvasses Garcia, Miguel Alvasses Garcia, Luis Alvasses Garcia; Maria Teresa Garcia y Ochandarena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena; Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez; Amelia Pozo y Nunez, by Saladrigas, her husband and next friend, Alfredo Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Fabre, Concepcion Pozo y Fabre, by ..... Reyes, her husband and next friend,

all aliens and residents and citizens of the Republic of Cuba, on behalf of themselves and all others in like situation and competent to sue in this Court who may come in and share in the expense of this suit, bring this their bill against the Wilson Cypress Company, a corporation organized and existing under and by virtue of the laws of the State of Florida, a citizen of the State of Florida, defendant.

2 And thereupon your orators complain and say:

First. That your orators (save those who, having no interest are joined as parties as the husbands and next friends of the married women, suing with respect to their separate statutory rights) are all heirs at law of Miguel Marcos, a lieutenant in the Spanish Army, who was granted by the lawful authorities of the King of Spain, on the 18th day of October, A. D. 1815, five thousand, five hundred (5500) acres of land in the then Province of East Florida, on the two banks of a creek which empties into the St. John's River, about two miles north of Long Lake, and of his widow, Teresa Rodriguez, to whom in her own right, and for and in behalf of her children, the said grant was confirmed by the United States to

the extent of a league square, as will more fully appear by reference to the proceedings of the commissioners appointed to ascertain claims and titles to land in East Florida, printed in Volume Four (4), American State Papers, pages 471-283, Duff Green Edition (vol. 4, page 697-705-571, G. & S. Edition), and the several acts of Congress relating thereto, which are referred to and prayed to be made a part of this bill as if fully set forth at length herein. That said grant was an inchoate right to said tract of land, under the laws of Spain called a first title or permit to occupy the land and after occupancy and proof thereof, to secure a complete or Royal Title, but before such title issued Spain ceded East Florida to the United States, who, by the 8th article of the Treaty occupied the position of Spain with regard to this and like grants of land and pledged themselves to confirm title thereto; that said lands were not surveyed nor segregated from the public domain during the sovereignty of Spain over the Province of Florida; that the same were wild and uncultivated, were never in the actual occupancy of the grantee or his widow or children and the title thereto at the cession of the Floridas passed to the United States subject to the equitable claim of the said parties thereof.

Second. That the issue of said Teresa Rodriguez and Miguel Marcos was Miguel Marcos, a son, and two daughters, named, respectively, Altagracia Marcos and Dorotea Marcos.

That Teresa Rodriguez y Marcos died intestate in Havana, Island of Cuba, in A. D. 1850, leaving her surviving her above named three children her only heirs at law.

That said Miguel Marcos y Rodriguez intermarried with one Diaz, and died intestate, as died also his wife, leaving two sons, Miguel Marcos y Diaz and Felix Genaro Marcos y Diaz.

That thereafter said Miguel Marcos y Diaz died without issue, and your orator, Felix Genaro Marcos, by operation of law, became entitled to the entire one-third undivided interest in said grant of land referred to in paragraph one, and hereinafter more particularly described, which had belonged to his father, Miguel Marcos y Rodriguez, son of the original grantee.

3

Third. That Altagracia Marcos y Rodriguez intermarried

with one Garcia, and both died intestate, leaving as the only heirs at law of said Altagracia, a son, Pedro, who died intestate, without issue, a son, Guaro, a daughter, Micaela, a daughter Gertrudis, and a son, Augustin, each of whom became by operation of law, severally the owner of an undivided one-twelfth (1/12) interest in the lands, the subject matter of this suit, and hereinafter described.

Fourth: That Guero Marcos y Gracia intermarried with one Pechardo, and both died intestate and left as the heirs at law of said Guero your orators,

Adelida Garcia y Pechardo, widow of Urbana Cordina,
Esteban Garcia y Pechardo
Lorenzo Garcia y Pechardo
Carmen Garcia y Pechardo, wife of Ysidro Zertucha
Rafaela Garcia y Pechardo, wife of Maximo Zertucha
Luis Garcia y Pechardo, and
Fausto Garcia y Pechardo,

who severally, by operation of law became and are the owners of an undivided one-eighty-fourth (1/84) interest in the lands, the subject matter of this suit, hereinafter fully described.

Fifth. That Micaela Marcos y Garcia intermarried with one Alvarez, otherwise called Alvasses, and both died intestate, and left as the only heirs at law of said Micaela, issue of said marriage, your orators,

Luis Garcia Alvasses
Alfonso Garcia Alvasses
Ricardo Garcia Alvasses, and
Miguel Garcia Alvasses,

who thereafter died intestate, leaving issue, or who died before his mother, as the fact may be, but your orators say that Miguel Garcia, son of said Micaela Marcos y Garcia died intestate, leaving your oratrix, Margarita, Alvasses de Garcia, his widow; and your orators, Ricardo Alvasses Garcia, Alfonso Alvasses Garcia, Miguel Alvasses Garcia and Luis Alvasses Garcia, his only heirs at law.

4 That by operation of law said Luis, Alfonso and Ricardo are severally owners of an undivided one-thirty-sixth interest in the lands, the subject matter of this suit, and said Ricardo, Alfonso, Miguel and Luis Alvasses Garcia are each owners of an undivided one one-hundred and forty-fourth (1/144) interest in the lands the subject matter of this suit.

Sixth. That Gertrudis Marcos y Garcia intermarried with one Diaz, and both died intestate, leaving issue of said marriage, your orators, Juan, Bautista Diaz y Garcia y Hernandez, Rafael Diaz Garcia y Hernandez and Flora Diaz Garcia y Hernandez, who are the only heirs of said Gertrudes Marcos, and by operation of law are severally owners of the undivided one-thirty-sixth (1/36) part of the lands, the subject matter of the suit hereinafter more particularly described.

Seventh. That Augustine Marcos y Garcia intermarried with one Ochandarena and died intestate leaving surviving issue of said marriage your orators, Ricardo Garcia y Ochandarena, Maria Teresa Garcia y Ochandarena and Gertrudis Garcia y Ochandarena, who are the only heirs at law of said Augustin Marcos y Garcia and are severally owners of an undivided one-thirty-sixth (1/36) part of the lands granted as in the first paragraph of this bill set out.

Eighth. That Dorotea Marcos y Rodriguez, one of the persons to whom the said grant of land was confirmed, intermarried with one Pozo and both died intestate long prior to the filing of this bill. That there survived issue of said marriage your orators, Ladislao del Pozo y Marcos, Enrique del Pozo y Marcos and Maria Pilar del Pozo y Marcos, now the wife of Ysidro Martinez y Sanchez, and Christina del Pozo y Marcos and Rosa del Pozo y Marcos, who by operation of law became severally the owners of an undivided one-fifteenth part of the said grant of land described in the first paragraph of this bill.

Ninth. Said Christina del Pozo y Marcos intermarried with one Nunez, and both died intestate, leaving issue of said marriage your oratrix, Amelia Pozo, wife of ..... Saladrigas, and your orators, Alfredo Pozo y Nunez and Ernesto Pozo

y Nunez, who by operation of law became and are severally owners of an undivided one-forty-fifth (1/45) interest in the said grant of lands described in the first paragraph of this bill.

Tenth. Said Rosa Pozo y Marcos intermarried with one Fabre, and both died intestate, leaving issue of said marriage your orators, Rosa Pozo y Fabre, Rigla Pozo y Fabre and Concepcion Pozo y Fabre, who by operation of law became and are severally owners of an undivided one-seventy-fifth (1/75) interest in the said grant of lands described in the first paragraph of this bill.

Eleventh. That the foregoing statement of the several births, deaths, marriages and shares of the several parties is made from an inspection of burial certificates, baptismal certificates and powers of attorney in the Spanish language, and because of the limited knowledge of said language possessed by counsel, such statements are likely to be inaccurate, and leave is here asked to amend this bill in respect to said statements or to make new parties as the facts may require.

Twelfth. That your orators are together the owners and holders in fee simple of substantially the entire interest or title in and to those certain tracts of land situate, lying and being in the County of Lake and State of Florida, designated upon the plats of the public surveys now recognized by the Land Department of the United States, as section thirty-seven (37), township nineteen (19), range twenty-eight (28), and section forty-one (41), township nineteen (19), range twenty-nine (29) and more fully described by metes and bounds in the patent therefor issued June 26th, 1895, to Teresa Rodriguez, her heirs and legal representatives, recorded in the records of the General Land Office, volume 479, pages 390-395. That said tract of land is of the value of much more than the sum of two thousand dollars ($2,000.00), and said lands are wild, uncultivated, uninclosed and unimproved, covered with a growth of timber, much of said tract being a cypress swamp, almost continually covered by water, incapable of improvement or occupancy, and said lands are not now and never have been in the occupancy of any person, and the value of the shares and interests of the complain-

ants in said lands greatly exceeds the sum of two thousand dollars.

Thirteenth. That soon after the cession of the Floridas to the United States the ancestress of your orators, Teresa Rodriguez, applied to the Board of Land Commissioners appointed to examine and report on claims to lands in East Florida for the confirmation of said grant made by the lawful authorities of the King of Spain, on the 18th day of October, 1815, and said grant was by said Board reported to Congress as a valid grant and recommended for confirmation, as appears by the printed report of said Board, cited in paragraph one of this bill. That thereafter Congress by its act approved May 23rd, 1828, (4 Statutes at Large, page 284) confirmed said grant to the extent of a league square, to be located within the limits of the original claim, and bounded by sectional lines, and to be in quantities of not less than
6 one section.

Fourteenth. That by the 6th section of said act of Congress (4 Statutes at Large, page 284), the ancestors of your orators to whom said grant was confirmed to the extent of a league square, were required to accept said confirmation as a final settlement of said claim, or else to bring their said claim before the Judge of the Superior Court for the District of East Florida, within one year from the passage of said act, (which time was afterwards extended to May 26th, 1831); but your orators aver that no proceedings were ever had before said District Judge in respect to said claim, and the ancestors of your orators were by said Act of Congress confirmed in their title to said lands to the extent of a quantity equal to one league square, to be located within the bounds of said original grant.

Fifteenth. That the Judicial and Executive branches of the Government of the United States, at the time said claim was confirmed and for many years thereafter, held that the quantity of land contained in a league square was four thousand, four hundred and thirty-eight and 68/100ths (4438.68) acres. That by the laws then in force in the territory of Florida it was the duty of the Surveyor General of said territory to make the survey of the lands confirmed to your ora-

tor's ancestors, and make certificate thereof and file the same in the Land Office of the United States in said territory. That among the acts of Congress extended to said territory and made effective therein was the Act of March 3rd, A. D. 1807, entitled, "An act to prevent settlements being made on lands ceded to the United States, until authorized by law," by the terms of which it was made unlawful to take possession of, survey or cause to be surveyed or settle upon any lands ceded or secured to the United States by any treaty with a foreign nation, or any land, the claim to which had not been recognized and confirmed by the United States, under a penalty of liability to a forfeiture to all right, title and claim to such lands as should be entered upon, taken possession of or surveyed. That the ancestors of your orators were residing in the Island of Cuba on the 23rd day of May, A. D. 1828, and they and their descendants have since that date resided in said Island, and none of your orators, or their predecessors in title have resided or been within the limits of the State of Florida since the passage of said act of Congress, approved May 23rd, A. D. 1828, confirming said grant to the extent of a league square.

Sixteenth. That the United States never surveyed and segregated the four thousand, four hundred and thirty-eight and 68/100ths acres of said grant to Miguel Marcos, as confirmed to the ancestors of your orators, as held by the Land Department of the United States, and the confirmees had no power to cause such survey to be made. That the lands embraced within said grant were surveyed as public lands by the United States in A. D. 1847, and such survey approved May 15th, 1848. A certified copy of the official plat of said T. 19, S. R. 28 surveyed as public lands is hereto attached marked Exhibit "D" and made a part hereof, and were by the Land Department of the United States held to be public lands of the United States and so treated, from about the year A. D. 1831 to the 12th day of February, A. D. 1894, upon which date the grant of land described in the first paragraph of this bill, was by the Land Department of the United States declared to be a valid, confirmed, private grant to Teresa Rodriguez, and ordered to be patented, and thereafter on the 26th day of June, A. D. 1895, the said grant described in the first paragraph of the bill was patented by

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the United States to said Teresa Rodriguez, her heirs, assigns and legal representatives, and in said patent were set forth and described as section thirty-seven (37), in township nineteen (19), south of range twenty-eight (28), and section forty-one (41), township nineteen (19), south of range twenty-nine (29), according to the plats of the public surveys made by the United States and for the aggregate of five thousand, four hundred and eighty-six and 46/100ths (5486.46) acres of land.

Seventeenth. That until the order of February 12th, A. D. 1894, made by the Land Department of the United States recognizing the validity of the title of the legal representatives of Teresa Rodriguez to the lands described in said patent, your orators, and those under whom they claim from and after May 23rd, A. D. 1828, were excluded from the possession of said land by the United States, and the United States had both the legal title and possession and right of possession of said lands, and any occupancy of said lands by any other than the United States was a mere trespass; that before said 12th day of February, A. D. 1894, your orators and those under whom they take title were not able to take a possession of the lands granted to their ancestors, because they were not able to locate the same and because the United States claimed the entire grant as public lands.

Eighteenth. That during the period when the United States was in possession of said lands granted to the ancestors of your orators, and had the legal title and claimed to be the absolute owner thereof, on, to-wit, the 5th day of July, A. D. 1852, one John Simpson, as sheriff, and ex-officio
8 tax collector of Orange County, Florida, attempted to sell and convey your orators' lands to one John Starke; that said pretended sale and attempted conveyance was based upon a pretended execution, claimed to be issued for certain unpaid taxes alleged to have been assessed upon the "lands supposed to belong to Teresa Rodriguez" and said Simpson did attempt to deed to said Starke "all the right, title and interest of Teresa Rodriguez and others" in and to said tracts of land.

9 And said alleged deed was transcribed upon the public records of Orange County, in Book "D," page 277, June 27th, 1855.

That said alleged assessment, sale and tax deed are absolutely null and void, because (1) the said pretended sale was for the taxes alleged to have been assessed on said Rodriguez's land, as a single tract or body of land containing five thousand, four hundred and eighty acres of land and to be payable for the years 1845-1846-1847-1848-1849-1850 and 1851, during all of which time the legal title to said lands was held by the United States, and the United States claimed ownership, and had possession thereof, and the four thousand, four hundred and thirty-eight and 68/100ths (4438.68) acres thereof, confirmed to Teresa Rodriguez as an unsegregated part thereof, not subject to taxation.

That the land described in the said deed was of the class expressly exempt from taxation by the Statute of the State of Florida, in force during the years of 1845 to 1851, inclusive, which in terms declared that the act for the assessment and collection of taxes should not be construed to authorize the assessing and collecting of any tax on lands belonging to the United States.

(2) That the alleged sale and attempted conveyance was upon a distress for an amount of taxes for each of said years in excess of what could have been lawfully levied upon the lands to which the ancestors of your orators had an equitable or inchoate right, in that by the tax law of the State of Florida then in force, a tax of from 1-4 of a cent to 3-4 of a cent, depending on the class of land, upon each and every acre of land, was imposed by the Legislature for each and every year; that such annual assessment of a definite sum per acre for each of said years was attempted to be levied upon the entire tract of five thousand, five hundred acres, granted by Spain to Miguel Marcos, and upon default in payment of the aggregate amount thereof, your orators' lands were attempted to be sold and conveyed by said Simpson, tax collector, while not more than four thousand, four hundred and thirty-eight and 68/100ths acres out of said grant was or could be subject to taxation, as the property of the ancestors of your orators, under the law as construed and announced and held by the judicial and executive branches of the Government of the United States.

(3) That six months' notice of the time and place of sale

was not given as required by law, nor was a notice containing a description of the lands attempted to be sold, given as required by law.

(4) That said land was not sold by Simpson, tax collector, in lots of forty acres as required by the statute in such case made and provided, and then in effect; and because the provision that in no case should the tax collector sell any more land than was sufficient to raise the full amount of taxes due thereon, was wholly disregarded by said Simpson in making said alleged sale to said Starke.

(5) Because by the statute in such case made and provided, upon a sale of lands for the non-payment of taxes, the sheriff was required to make a deed of conveyance, and said alleged tax deed by said Simpson to said Starke has no subscribing witnesses and is not a deed, and there exists no other evidence of said attempted sale and conveyance of your orator's land, and no right, title or interest of any nature whatsoever, was by said paper writing made by said Simpson, divested out of the ancestors of your orators, or vested in said Starke and said paper writing was never acknowledged or proved for record, and its transcript upon the records of Orange County was wholly unauthorized; a true copy of said paper writing is hereto attached and made a part of this bill, marked Exhibit "A."

Nineteenth. That although the ancestors of your orators, the children and issue of the marriage of Miguel Marcos and Teresa Rodriguez, were then alive and were the owners of an inchoate title and right to four thousand, four hundred and thirty-eight and 68/100ths acres of the tract of land granted to their father by Spain, which area of lands was still an unsegregated part of the said grant of five thousand, five hundred acres granted, and which had then been surveyed by the United States as section 37, township 19, range 28 and section 41, township 19, range 29, though said survey had not been approved by the Surveyor General, and although the United States then claimed absolute ownership of the whole of said grant and was in the adverse possession thereof under the claim of ownership and was holding and treating such lands as public lands of the United States, all of which your orators aver

to be the fact, taxes were attempted to be assessed against a large part of the lands embraced in said grant, set out in the first paragraph of this bill, for the years 1867, 1868 and 1869, and a large part of the same were assessed in the name of John Starke owner, and thereafter on the 23rd day of April, A. D. 1872, one Robert C. Partin, as Tax Collector of Orange County, Florida, attempted to execute a deed thereof, purporting to convey all the right and interest of John Stark "and others" in and to the same for the unpaid taxes of 1867, 1868 and 1869 attempted to be levied thereon, to one William Mills, and said alleged deed, duly sealed and witnessed and acknowleged as required by law, was thereafter recorded in the
11 public records of Orange County in Miscellaneous Records Book "A," page 310, a true copy whereof is hereto attached and made a part of this bill and marked Exhibit "B."

Twentieth. That said assessment, sale and alleged tax deed are null and absolutely void and in no manner or degree divested the title of your orators in said land described in said alleged deed, or vested any right, title or interest in the said William Mills, for the reasons that:

(1). The lands in said alleged deed described were not subject to taxation for either the years 1867, 1868 or 1869, but were at the said times and at all times between May 23rd, 1828, and up to A. D. 1895, in the adverse possession of the United States, claiming to be the owner thereof; and because John Starke had no right and interest whatsoever in the lands in said alleged deed described.

(2). That the taxes for the non-payment whereof said lands were sold and attempted to be conveyed, were assessed to John Starke, and were not assessed as required by law, if the land were subject to taxes; that said lands were unoccupied and uncultivated from prior to 1867 to subsequent to 1869, and during said period said John Starke was neither owner nor occupant of said lands, and said lands were not assessed to the owner thereof, neither were they assessed as "non-resident" or assessed as unoccupied land, without inserting on the roll the name of any person.

(3). The lands were not described for taxation as required by law. The assessor failed to set down in the assessment roll for either of the said years 1867, 1868 or 1869 a description of the tract or parcel of land to be taxed, specifying under appropriate heads the township, range and section, in which the land lay, and the number of acres, but were described upon the assessment roll and taxed as the property of John Starke, and set out as sections 9, 10, 11, 12, 13, 14, 15, 16 and part of sections 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 of township 19, range 28, east, without designating any particular part or subdivision of said enumerated sections.

(4). That said lands were not listed and sold as required by law in default of non-payment of the taxes duly levied.

(5). That the notice of sale as required by law was not given, and your orators aver that the proceedings for notice prescribed in Sections 62 and 63 of Chapter 1713, Laws of Florida, were not complied with.

(6). That the sale of said lands was not conducted in the manner prescribed by law, in that so much only of
12 each parcel of land as would pay the taxes, costs and charges thereon, to be taken in a square form in the southeast corner of each parcel, was not sold, but all of said enumerated sections and parts of sections as assessed were sold in bulk.

That a list of said lands so attempted to be sold for taxes was not made and entered of record as required by law, and no copy of such record was made by the Clerk of Orange County and kept in his office as required by law.

(8) That the attempted conveyance under the form of a deed by Partin, tax collector, is without any warrant of law, there being no statute of the State of Florida that authorized a tax collector to execute a tax deed upon a sale for the non-payment of taxes, such tax deed being by law required to be executed by the county clerk of the county wherein lie the lands sold for taxes.

(9) That said sale was not made at the time provided by law.

(10) That said alleged deed is not in the form required by law.

(11) That the description of the lands for the assessment of the taxes for which said sale was made was "The Claim of Teresa Rodriguez" and not by Section, Township and Range, as the same had been surveyed and platted.

(12) That the lands attempted to be conveyed were not sold by the same description as assessed.

(13) That the deed and record thereof were not accompanied by the proof of advertisement.

(14) For other reasons to be shown to the Court upon the hearing of this cause.

Twenty-first. Your orators on information and belief aver that the said tax sale and assessment on which the same was based, set out in the nineteenth paragraph of this bill was had and made in the execution of a conspiracy to deprive your orators of their right, title and interest in the grant of land set out in the first paragraph of this bill entered into and executed by Robert C. Partin, William Mills and one George C. Powell.

Twenty-second. That said William Mills never attempted to take any possession of the lands described in said alleged tax deed to him, but on, to-wit, the 23rd day of May, A. D. 1872, attempted to convey by deed in writing the same lands in said deed described, to said George C. Powell which said deed executed in due form of law has been recorded in the records of Orange County, Florida, in Misc. Book A, page 312.

13 Twenty-third. That of the several sections of said land attempted to be conveyed as hereinbefore set forth, each of which as to the full sections is and was a known lot of land in the form prescribed by the land laws of the United States, and as set out and designated upon the official plat of said township 19, range 28, as surveyed and platted by the deputy surveyor of the United States in A. D. 1847, the said George C. Powell entered upon only section nine (9) of said

township nineteen, range twenty-eight and made some improvements to your orators unknown and cut some timber thereon.

That said George C. Powell did not occupy or exercise acts of ownership or take or have any possession or evidence of possession as to any other part of the lands described in the said deed to him from said William Mills, save only as to some part of said section nine (9). That such occupancy and acts of ownership on the part of said Powell, even as to the lands embraced in said section nine were continued but for a short term and were not uninterrupted by continued occupany for seven years, and then the said land in section nine except as hereinafter described was abandoned by said Powell, and your orators aver that the acts of said Powell indicating a claim of ownership were not sufficient either in character or duration to enable said Powell to claim the benefit of the statute of limitations against any action brought by your orators against him to recover the lands in said section nine, if your orators or their predecessors in title could have brought such action.

And they further aver that all such acts were mere trespasses and contrary to the statute in such case made and provided.

Twenty-fourth. Your orators say that during the whole time said Powell occupied some part of said section nine (9) and claimed title to the same and to any of the lands embraced in the grant to said Marcos, is set out in paragraph one of this bill, your orators and their predecessors in title were precluded from bringing any action for the recovery of such part of said lands as were in the occupancy of said Powell, and of such other part thereof as said Powell was committing trespass upon, for the reason that all the lands granted to said Marcos were adversely held and claimed by the United States and held to be public lands of the United States.

Twenty-fifth. That while your orators were excluded from the possession of their said lands by the United States, said Powell by deed in writing attempted to convey certain parts of said section nine (9), township nineteen (19), range twenty-eight (28), and certain tax sale certificates were issued against some part thereof; that as to all persons claiming any rights under

said attempted conveyances or under said tax sale certificates, your orators ask leave to amend their bill and make said persons parties defendants when and as soon as they can be ascertained.

14 Twenty-sixth. That while your orators were so excluded from their said lands by the United States on, to-wit, the 2nd day of May, 1884, said George C. Powell attempted to convey by deed in writing to one Henry S. Sanford all the lands except said section nine, township nineteen, range twenty-eight, which are described in said alleged deed from said William Mills to said Powell, which alleged deed from said Powell is duly sealed, witnessed and acknowledged, and has been recorded in Book "Y," page 962, of the public records of Orange County, Florida, and thereafter while your orators were still excluded by the United States from the said lands on, to-wit, the 15th day of November, 1881, the said Powell attempted to convey by deed in writing to said Henry S. Sanford all of said section nine (9), township nineteen (19), range twenty-eight (28), except the north half of the northwest quarter of said section (which said Powell had previously attempted to convey to one, William Stade) and sixty acres which said Powell attempted to convey to Smith and Clifford; the said alleged deed from Powell has been recorded in Book No. 7, page 276, of said public records of Orange County.

Twenty-seventh. That Henry S. Sanford never took or held any occupancy of the lands to him attempted to be conveyed, and never performed any acts indicating ownership or possession of said lands, and during all the time the said Sanford claimed said lands the same were in the adverse possession of the United States and the State of Florida, claiming to own the same.

Twenty-eighth. That on, to-wit, the 9th day of January, 1884, and while your orators were excluded from said lands by the United States, and while the United States and the State of Florida were in possession of the whole of said land, each claiming ownership of definite parts thereof, said Henry S. Sanford attempted to convey by deed in writing, duly sealed, witnessed and acknowledged to Edwin Dawes, George Thomson and Anthony Norris, the trustees of the Florida Land &

Colonization Company, Limited, all of the said lands to him attempted to be conveyed by said Powell as hereinbefore set out, and said alleged deed has been recorded in the public records of Orange County in Deed Book 12, page 400; that on, to-wit, the 2nd day of December, A. D. 1899, Edwin Sandys Dawes and George Augustus Thomson, two of said trustees quit claimed to said Florida Land & Colonization Company the same land which said quit claim deed is recorded in the public records of Lake County, Florida in Book No. 35, page 541, etc.

15 Twenty-ninth. That neither said Florida Land & Colonization Company, nor its trustees, actually occupied any part of said land or performed any acts evidencing a claim of ownership, except payment of taxes thereon, and on, to-wit, the 3rd day of May, A. D. 1900, said Company by deed in writing, by Frederick H. Rand, its attorney in fact, sealed, witnessed and acknowledged, attempted to convey to the defendant herein, the Wilson Cypress Company, all the lands granted to said Marcos, as set out in the first paragraph of this bill, the same being described therein as section thirty-nine, township nineteen, range twenty-eight and section forty-one, township nineteen, range twenty-nine, excepting only the two tracts which were excepted from the alleged deed of Powell to Sanford, as set out in paragraph twenty-six of this bill, which alleged deed has been recorded in the public records of Lake County, Florida, in Deed Book 35, page 593, a true copy whereof is hereto attached, marked Exhibit "C."

Thirtieth. That as to section forty-one (41) township nineteen (19), range twenty-nine (29), the grantor in said alleged deed in paragraph twenty-nine referred to, never held any written evidence of title, the same never having been sold for unpaid taxes to said William Mills or included in said alleged deeds from Mills to Powell or from Powell to Sanford, and from Sanford to said trustees of said Florida Land and Colonization Company.

Thirty-first. That the defendant at some time after the date of said alleged deed built on said Rodriguez Grant a cabin and has employed an agent to watch said property and keep the timber which covers said lands from being stolen,

but your orators say that said lands are wild, unimproved and unoccupied, and that the defendant is not in actual possession thereof, and has never had such a possession thereof as in law would bar a right of entry by your orators, though your orators aver it is the hope and expectation of said defendant to so hold and use its claim to title and said deed from said Colonization Company to bar a recovery by your orators, and defeat and destroy your orators title by lapse of time.

And your orators aver that they are and have been since the issuance of the patent from the United States on, to-wit, the 26th day of June, A. D. 1895, in the possession of said lands the subject matter of this suit.

Thirty-second. That your orators have been diligent in the prosecution of their rights and have not been guilty of laches, and are not estopped to assert their rights against the defendants.

That about A. D. 1890 your orators employed new
16 counsel and sought to procure from the United States a recognition of their right to the lands granted to said Marcos as described in paragraph one of this bill, or the issuance of a patent for the 4436.86 acres confirmed to Teresa Rodriguez and children by the Act of Congress of May 23rd, 1828; that the United States continued to refuse to recognize the grant of land until November, A. D. 1894, when by direction of the Secretary of the Interior, the previous ruling and holding of the Commissioner of the General Land Office that the lands embraced in the grant to Marcos were public lands of the United States, was reversed and set aside and for the first time since A. D. 1828 the United States recognized said lands as private lands and as belonging to your orators and to those under whom they claim. And your orators aver that the survey of your orators lands as a private claim was not approved and did not become effective as a segregation of said lands from the Public Domain until June 18th, 1894.

Thirty-third. That at the time of and after the said recognition by the United States of the said private land claim of Teresa Rodriguez and the right of her legal representatives to a conveyance of the legal title thereto from the United States, it was found that about fifteen hundred acres thereof

had been patented as public lands by the United States to the State of Florida on March 14th, 1872, and May 19th, 1872. Patents 9 and 10, respectively, as Swamp Lands, and thereafter the State of Florida, by its Board of Trustees of the Internal Improvement Fund on, to-wit, the 17th day of April, A. D. 1895, released and quit claimed unto the United States of America the following described lands embraced within said grant to said Marcos, and part of the lands claimed by the defendant, the Wilson Cypress Company, as having been conveyed to it in said alleged deed described in the twenty-ninth paragraph of this bill, to-wit, the northwest quarter of the southeast quarter, the east half of the southwest quarter of section twelve (12); the west half of section thirteen (13), the southeast quarter of the northeast quarter and the south half of section fourteen (14) of the south half of the northeast quarter, the south half of the northwest quarter and the south half of section fifteen (15), all in township nineteen (19) south of range twentyeight (28), east.

Thirty-fourth. That thereafter on, to-wit, the 26th day of June, A. D. 1895, the United States quit claimed and patented to the legal representatives of Teresa Rodriguez the said lands granted to the said Marcos as set out in paragraph one, of this bill, and which had been surveyed as section thirty-seven (37), township nineteen (19), range twenty-eight (28) and
17 section forty-one (41), township nineteen (19), range twenty-nine (29) containing five thousand four hundred and eighty-six and 46/100ths (5486.46) acres, and said patent is duly recorded in the records of the United States General Land Office in Volume 479, page 390-395, and a certified copy thereof will be shown to this Honorable Court at the hearing hereof, that said patent was thereafter promptly recorded in the public records of Lake County, Florida, and the Florida Land and Colonization Company had actual knowledge of the issuance thereof when it attempted to convey the said lands therein described to said defendant, the Wilson Cypress Company, and said defendant had a like knowledge when it took its said alleged deed which is in legal effect a mere quit claim.

Thirty-fifth. That from and after June 26th, A. D. 1895, your orators and their predecessors title were for the first

time entitled to the possession of their said lands, and from and after said date said lands first became subject to taxes; that thereafter your orators sent their agent to Florida and took such possession of said lands as the same were capable of, going on said lands and posting notices warning all persons not to trespass thereon; and continued and have continued to this present to claim and exercise acts of ownership thereof. That soon after said alleged deed referred to in paragraph twenty-nine to said defendant your orators began suit against said Wilson Cypress Company to cancel its alleged deed to their said lands, but without their fault and wholly through the neglect of their counsel to comply with the rules of this Court as to the taking of testimony in said suit your orators were obliged to dismiss their said suit, the same being dismissed without prejudice as will appear by the records and files of this Court.

Thirty-sixth. That each and every the said attempted sales and attempted conveyances hereinbefore set out of your orators said lands and parts thereof, from the alleged tax deed to John Starke to the alleged deed to the defendant, the Wilson Cypress Company, are wholly void and convey no title to your orators lands, but as to all said alleged deeds except the said alleged deed to John Starke, the same are fair upon their face and their execution and record are each and all clouds upon the title of your orators and hinder your orators in the full and free enjoyment of their said property, and hinder timber thereon, and the same should be cancelled and discharged from the public records.

That the defendant will aver in answer to this
18 bill that no patent was necessary to evidence title in the legal representatives of Teresa Rodriguez to the lands granted to said Marcos and confirmed to her; that by the treaty between the United States and Spain said grant was confirmed and title vested in the grantee and his legal representatives without the issuance of a patent, but your orators allege under the facts in this case as set out herein such averments will not be true, that the patent is record evidence of the action of the United States upon the title to the lands granted to said Marcos as set out in paragraph one of this bill, and is a conveyance of the interest of the United States therein; that on the face of said patent which has been

spread on the records of deeds of Lake County, Florida, it appears that the same is issued upon a survey of said lands approved by the Surveyor General of Florida, June 18th, 1894, and upon a summary of the facts in this case the law is and will be seen to be that the United States did not relinquish its title and possession of the lands described in said patent until the date thereof, the 26th day of June, A. D. 1895, and until said date your orators and those under whom they hold title had no right to the possession of the lands in said patent described; that the obligation to confirm grants of land assumed by the United States by the treaty with Spain was political in character, and to be discharged as that sovereign deemed expedient and as to this particular grant the United States retained possession and title thereto from May 23rd, 1828, to the issuance of the said patent; that before the approval of the survey of the lands granted to Marcos the legal title was in the United States and the claim of your orators attached to no particular land.

Defendant will also aver that said John Starke and said George C. Powell and the other persons herein named, including the defendant, the Wilson Cypress Company, have been in possession of said lands under claim of title and have used and cultivated the same, but your orators allege that such possession has been only periodic and of particular and designated subdivisions of said lands, and that prior to June 26th, 1895, all of the acts and evidences of such possession have been violations of law and trespasses committed against the right and title of the United States, and that none of the acts of possession have been claimed to have been taken and held as against the title of the United States, nor has the same been adverse or exclusive to the possession of the United States. That your orators took actual possession of the said lands immediately after June 26th, 1895, and there never has been such an ouster of such possession as would establish an adverse holding in the Florida Land and Colonization
19 Company, Limited, or in its grantees, the Wilson Cypress Company. That though the defendant may have had some person employed to watch said lands that such person has at most occasionally visited said lands and prevented general trespass thereon, or possibly from time to time committed acts of trespass thereon, but has never taken an actual,

open and exclusive possession of the whole tract patented to your orators by the United States.

And although the Florida Land and Colonization Company were never in the actual occupancy of said lands and never took any possession thereof after the United States conveyed its interest therein and yielded its possession thereof, to your orators, yet defendants will aver that the deed from the Florida Land and Colonization Company to said defendant, the Wilson Cypress Company, passed its title and right of possession to said lands to said defendant company, but your orators say that they had taken actual possession of said lands and held the legal title thereof at the date of said alleged deed from said Florida Land and Colonization Company to said defendant, and their constructive possession to every part of the entire tract of land was not ousted by the limited possession taken of some small portion of said tract by the said defendant, if in fact any possession at all thereof has been taken by said defendant which is not admitted, and if defendant avers to the contrary your orators call for a particular statement of the times and character of such acts of possession, by whom performed and upon what particular part of said tract had and done.

And your orators say that the defendant, the Wilson Cypress Company, has no other claim or title to their said lands, except by and under the alleged deed from the Florida Land and Colonization Company; that the said Florida Land and Colonization Company had or claimed no other title to said lands except by and under the said alleged deed from said Dawes and Thomson, trustees, and that said Dawes and Thomson, trustees, had or claimed no other title to said lands except under and by the said alleged deed from Henry S. Sanford, and that said Sanford had or claimed no other title to said lands except by and under said alleged deed from said George C. Powell, and said Powell had or claimed no other title to said lands except by and under said alleged deed from said William Mills, and that all the several claims of title and right are based upon none other than the said tax deed from said Robert C. Partin, hereinbefore set out, and that as to all of said persons and claimants there has at no time been any adverse possession of said lands as against your orators and those under whom they derive title, and as to all
20 of said claimants except the Florida Land and Colon-

ization Company and the defendant, the Wilson Cypress Company, there could not have been adverse possession of said lands, because the possession thereof was in the United States and the State of Florida, each holding specific parts thereof from A. D. 1850, and as to these sovereign states your orators aver that neither the Florida Land and Colonization Company nor the defendant, the Wilson Cypress Company, ever claimed to hold said lands adverse to the United States or the State of Florida, reasons hereinbefore set out.

And that as to all said persons and claimants there has at no time been any adverse possession of said Lands as against your orators, and as to all except the Florida Land & Colonization Company, and the defendant, the Wilson Cypress Company, there could not have been any adverse possession of said lands, because the possession thereof was in the United States and the State of Florida, and as to these sovereign states your orators aver that neither the Florida Land & Colonization Company nor the defendants ever claimed to hold adversely the said lands, the subject matter of this suit.

Thirty-eighth. Your orators would further show unto your Honors that the defendant, the Wilson Cypress Company, is engaged in and its principal business is cutting timber and sawing the same into lumber, shingles, etc., and that they threaten and are threatening and continue to threaten to enter upon said lands and all of them, and cut and carry away all of said trees and timber standing and growing thereon which constitutes the principal value and practically the entire salable value of said lands, which would amount to practically destroying them or to render them unfit for use and enjoyment of which they are naturally capable, and preventing your orators from obtaining their value, or themselves cutting and using the timber and from enjoying the just and proper use and privileges of said lands, and that if said timber was cut and carried away it would amount to the destruction of the estate.

Thirty-ninth. Your orators therefore pray, first, that a writ of injunction may issue directed to said defendant, the Wilson Cypress Company, its officers and agents, restraining and enjoining it and its officers and agents and attorneys,

and each of them from taking possession of or disturbing your orators possession of said lands patented by the United States to the legal representatives of Teresa Rodriguez, and which are situate in the County of Lake and State of Florida, and by the official survey thereof approved by the United States Surveyor General of Florida on the 18th day of June, A. D. 1894, are described as follows:

21 "Beginning at the N. W. corner of the claim of Teresa Rodriguez at a pine marked "X R," thence south on the west line of this survey, 250 chains x north line of Section 8, 76.80 chains east of its N. W. corner; from said point a pine bears N. 60 degrees W. 20 links and a pine bears S. 10 degrees W. 15 links distant, 82.60 chains x north line of section 17, 76.50 chains east from its N. W. corner from said point a pine bears N. 20 degrees E. 40 links distant. 97.00 chains x branch, course west. 162.65 chains x north line of section 20, 76.70 chains east from its N. W. corner.

(Note.—No description of a corner at this point in the field notes) 168.00 chains the S. W. corner of this survey. From said corner a pine marked "X R" bears N. 60 degrees E. 60 links distant.

Thence east on second and south line of this survey 3.80 chains x west line of section 21, 74.55 chains, north of its S. W. corner. From said point a pine bears S. 69 degrees W. 30 links, and a pine bears S. 31 degrees E. 20 links distant. 51.00 chains to grass pond, 57.00 chains x grass pond, 83.80 chains x west line section 22 (in edge of branch of White Sulphur Spring) 74.60 chains north of its S. W. corner. (Note.—No corner at this point described in the field notes) 85.00 chains, x branch or creek 98.00 chains, to hammock. 163.65 chains, x west line of section 23, 74.65 chains north from its S. W. corner; from said point an iron tree bears S. 89 degrees W. 15 links, and an iron tree bears S. 30 degrees E. 25 links distant. 166.00 chains, x a branch, course north; 217.00 chains to a swamp, 243.58 chains x west line section 24, 74.70 chains north of its S. W. corner. From said point an ash bears S. 7 degrees W. 77 links and a maple bears S. 30 degrees E. 20 links distant, 270.00 chains to hammock. 301 chains x hammock. 304.00 chains to bay

gall, 306.50 chains, x bay gall. 315.00 chains to hammock. 324.40 chains x east line section 24 (Range line) 74.80 chains, north from its S. E. corner. From said point a cabbage bears S. 15 degrees W. 30 links and a cabbage bears S. 28 degrees E. 12 links distant. 327.00 chains (in Range 29 east) the S. E. corner of this survey. (Note—No description of corner in field notes).

Thence north on the east line of this survey, 5.80 chains x north line of section 19, 76.45 chains west from its N. E. corner. From said point a myrtle bears N. 30 degrees E. 15 links and a myrtle bears S. 26 degrees E. 20 links distant 13.00 chains to a deep creek. 14.00 chains x creek. 23.00 chains to scrub. 30.00 chains to swamp. 35.00 chains to hammock. 55.00 chains x hammock. 60.00 chains to pine and cabbage. 65.00 chains x pine and cabbage 78.00 chains to pine & cabbage 86.00 chains x north line section 18, 76.30 chains west from the line of Pedro Miranda's grant. From said point a pine bears north 62 degrees E. 50. links and a pine bears S. 61 degrees E. 45 links distant. 104.00 chains to hammock. 125.00 chains x hammock. 166.06 chains x north line of section 7, 76.35 chains west from its N. E. corner. From said point a cabbage bears S. 30 degrees E. 50 links and a cabbage bears N. 22 degrees E. 30 links distant 168.00 chains, the N. E. corner of this survey. From said corner a pine bears N. 50 degrees W. 26 links marked "XR."

22

Thence west on the north line of this survey 3.50 chains x west line of section 6 (Range line) 78.00 chains south of its N. W. corner. From said point a pine bears N. 25 degrees E. 60 links, and a pine bears N. 40 degrees W. 70 links distant. 15.00 chains (in Range 28 east) to swamp. 23 chains x to hammock. 40.00 chains to pine and cabbage. 63.60 chains to burnt bay. 83.65 chains x west line of section 1, T. 19, R. 28, 77.89 chains south of its N. W. corner. (Note.—No corner described at this point) 97.00 chains to hammock. 125.00 chains to creek. 125.60 chains x creek. 163.81 chains x west line of section 2, 77.65 chains south from its N. W. corner. From said point a water oak bears N. 28 degrees W. 41 links, and a live oak bears N. 60 degrees E. 17 links distant. 167.00 chains x hammock. 243.70 x west line of section 3, 77.60 chains south of its N. W. corner. (Note.—No description of corner at this point in field notes) (last 80.00 chains scrubby) 323.10 chains x west line of section

4, 77.85 chains south of its N. W. corner. From said point a pine bears N. 43 degrees E. 10 links distant. 326.15 chains to N. W. corner of this survey and place of beginning, being section 37, township 19, south of range 28, east, and section 41, township 19, south of range 29, east, of the principal meridian, Florida, containing five thousand, four hundred and eighty-six acres and forty-six hundredths of an acre."

And from claiming any right, title or interest in said lands by or under said alleged deed from the said Florida Land & Colonization Company, Limited, to said defendant and from selling, conveying or encumbering or attempting so to do your orators said lands, and from cutting any timber thereon or removing any timber or trees therefrom, and

Second. That the alleged tax deed from John Simpson, sheriff and ex-officio tax collector of Orange County, Florida, to John Starke, dated the 5th day of July, A. D. 1852, and transcribed into the public records of said county in Book "D," page 277 and 278, and the alleged tax deed from Robert C. Partin, tax collector of Orange County, Florida, to William Mills, dated the 23rd day of April, A. D. 1872, re-
23 corded in the public records of Orange County, Florida, in Miscellaneous Record Book "A," page 310, be decreed to have been made and executed without authority of law and be annulled and cancelled, and

Third. That the alleged deed from William Mills to George C. Powell, dated May 3rd, 1872, recorded in the Orange County records in Miscellaneous Records Book "A," page 312, and the alleged deed from George C. Powell to Henry S. Sanford, dated the 27th day of October, A. D. 1881, recorded in the Orange County records, Book "Y," page 962, and the alleged deed from George C. Powell to Henry S. Sanford, dated November 15th, 1881, recorded in the Orange County records in Book "Y," page ..... and the alleged deed from Henry S. Sanford to Edwin Dawes, George Thomson and Anthony Norris, trustees in the Florida Land and Colonization Company, Limited, dated the 9th day of January, A. D. 1884, recorded in Orange County records, Deed Book "12," page 400, and the alleged deed from Edwin Dawes and George Thomson, trustees to the Florida Land and Colonization Company, Limited, recorded in Book No. 35, p. 541, Lake

County Records, and the alleged deed from the Florida Colonization Company, Limited, to the Wilson Cypress Company, dated May 3rd, 1900, recorded in the public records of Lake County, Florida, in Deed Book 35, page 593, be each of them decreed to be null and void and be cancelled of record. That the clerk of the Circuit Court for Orange County may be directed to enter upon the margin of the respective forementioned records of his office a memorandum or note of such decree, and such clerk of Lake County be directed to enter a similar memorandum on the margin of said Deed Books No. 35, page 541, and No. 12, page 400, and that the defendant, the Wilson Cypress Company, may be required to surrender for cancellation the said alleged deed from the Florida Land & Colonization Company, Limited, to your orators lands, and all other of said enumerated deeds affecting said property in its possession or control; that all outstanding tax sale certificate against said lands issued prior to February 12th, 1894, when the United States first recognized your orators lands to be private property, and ceased to claim the same as public lands of the United States, and tax deeds issued thereon or on any thereof, be required to be surrendered and be cancelled, in whosever hands the same may be found, upon making a party hereto the holder thereof and after due notice and opportunity to defend this suit.

24 Thirty-ninth. That the said injunction may be made perpetual.

Fortieth. May it please your Honors to grant to your orators due process by subpoena directed to said Wilson Cypress Company.

The said defendant ..... therein and thereby requiring and commanding the said defendant, ... to appear herein and answer (but not under oath, the same being expressly waived) the several allegations in this your orators bill contained and further to stand and abide such order and decree herein as may seem meet.

Forty-first. And your orators further pray such other and further relief as may be just and equitable.

(Signed) WILLIAM W. DEWHURST.
(Signed) JONES & JONES,
Solicitors for Complainants and of Counsel.

25 State of Florida,
County of Duval.

I, J. H. Jones, being duly sworn, say that I am of counsel for the complainants in the foregoing suit, that all of said complainants are absent from the State of Florida, and without the Southern District of Florida, that I am acquainted with the facts upon which this suit is based and have read the foregoing bill of complaint and know the contents thereof, and that as to those things stated absolutely, the same are true, and as to those matters therein stated on information and belief, I have reason to believe and do believe them to be true.

(Signed) J. H. JONES.

Sworn to and subscribed before me, this 30th day of April, A. D. 1907.

(Signed) E. O. LOCKE,
Clerk, U. S. Court, So. Dist. Fla.

26 EXHIBIT "A."

State of Florida,
County of Orange.

This indenture made the 5th day of July, A. D. 1872, between John Simpson, sheriff and ex-officio tax collector of Orange County and state aforesaid, of the one part, and John Starke of the other part, witnesseth, that whereas the said John Simpson being duly commissioner and qualified as sheriff and ex-officio tax collector of said County of Orange, did on the fifth day of July, 1852, levy upon and take in execution a certain tract of land hereinafter described, supposed to belong to Teresa Rodriguez for taxes due thereon to said State of Florida, from the year eighteen hundred and forty-four and including eighteen hundred and fifty-one, and whereas the said John Simpson after due and legal publication of the same, did offer the said tract of land containing five thousand four hundred and eighty acres, and situated as follows, vs [viz:] In Section 37, Township 19, Range 28, did at public outcry for sale at the court-house of said County of Orange on the fifth day of July, A. D. 1852, and whereas, the said party of the second part having offered then and

there the highest bid for said tract of land, the same was knocked down to him by the said party of the first part, sheriff, etc., as aforesaid.

Now, this indenture witnesseth that the said party of the first party [part] sheriff and exofficio tax collector as aforesaid for and in consideration of the sum of three hundred and forty-seven dollars and fifty cents say ($347.50) to him in hand paid by the said party of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain and sell by virtue of his office aforesaid, all the right, title and interest, whatsoever, of the said Teresa Rodriguez or others in and to the tract of land above described with the appurtenances thereto belonging, to have and to hold the same unto the said party of the second part, his heirs and assigns to the only proper use and behoof of said party of the second part, his heirs and assigns forever, and the said party of the first part, sheriff and exofficio tax collector as aforesaid, for himself, his executors and administrators doth covenant and promise to and with the said party of the second part, his heirs and assigns that he has well and truly complied with and performed all the requirements of the statute in such case made and provided, and the said party of the first part sheriff, etc., as aforesaid, for himself, his heirs, executors and administrators, doth warrant and forever defend unto the said party of
27 the second part, his heirs and assigns the said tract of land with the appurtenances belonging thereunto against the said Teresa Rodriguez or others.

In witness whereof, I have hereunto set my hand and seal this day in the year first above written.

(L. S.) JOHN SIMPSON,
Sheriff and Tax Collector of Orange County.

Recorded in Book D, pages 277-278, June 27th, A. D. 1855.

ARTHUR GINN, Clerk.

28 EXHIBIT "B."

State of Florida,
Orange County.

This indenture made and entered into this the 23rd day of April, A. D. one thousand eight hundred and seventy-two (1872) between Robert C. Partin, tax collector for Orange County, Florida, party of the first part, and William Mills of the aforesaid county and state, party of the second part; witnesseth, that, whereas the said Robert C. Partin being duly commissioned and qualified as tax collector of said County of Orange, did on the twentieth day of August, A. D. one thousand eight hundred and seventy, levy upon and take in execution a certain tract of land hereinafter described, belonging to John Starke for taxes due thereon to said County of Orange and for the State of Florida, for the years one thousand eight hundred and sixty-seven, one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine; and whereas, the said Robert C. Partin after due and legal publication for six months before the day of sale, did advertise the same in the St. Augustine Examiner, a newspaper published in St. Augustine, St. Johns County, Florida, said paper at that time being designated by law as a legal newspaper to publish such advertisement, and did on the sixth day of March, A. D. one thousand eight hundred and seventy-one, being the day of said sale, did during the legal hours of sale in front of the court-house in Orlando, Orange County, Florida, offer the following tract of land containing five thousand five hundred and twenty-six 22/100ths acres, more or less situated as follows, viz.:

Sections twelve, thirteen, fourteen, fifteen, sixteen, nine, ten and eleven, and a part of Sections one, two, three, four, five, eight, seventeen, twenty, twenty-one, twenty-two, east, known as the Grant of Teresa Rodriguez, said land lying and being in the County of Orange and State of Florida, did at public outcry offer the above described land for sale; and whereas, the said party of the second part being then and there offered the highest bid for said tract of land, and the same was knocked down to him by said party of the first part, tax collector as aforesaid, for the sum of three hundred and fifty-five 23/100 dollars, being the amount due on said land

for taxes, and the same amount of money being in hand paid to the party of the first part by the party of the second part, the receipt whereof is hereby acknowledged.

29 Now, I, Robert C. Partin, tax collector of Orange County, Florida, party of the first part, hath bargained and sold, and by these presents doth grant, bargain and sell by virtue of my office aforesaid, all the right and interest, whatsoever, of the said John Starke or others in and to the tract of land above described with the appurtenances thereto belonging.

To have and to hold the same unto the said party of the second part, his heirs and assigns to the only proper use and behoof of said party of the second party [part] his heirs and assigns forever.

And the said party of the first part, tax collector as aforesaid, for himself, his heirs and assigns, doth covenant and promise to and with the said party of the second part, his heirs and assigns, that the party of the first part has well and truly complied with and performed all the requirements of the statute in such cases made and provided. And the said party of the first part, tax collector of Orange County, Florida, for himself and by virtue of his office, will warrant and forever defend unto the party of the second part, his heirs and assigns, the aforesaid tract of land with the appurtenances thereunto belonging against the said John Starke or others.

In witness whereof, I have hereunto set my hand and seal the day and year above written.

[Seal] (Signed) ROBERT C. PARTIN,
Tax Collector of Orange County, Florida.

Signed, sealed and delivered in the presence of:
JAMES J. DAVIS.
J. P. HUGHEY.

State of Florida,
Orange County.

On this 14th day of November, A. D. 1872, before J. P. Hughey, clerk of the Circuit Court in and for the state and county aforesaid, personally came Robert C. Partin, tax collector of Orange County, Florida, to me well known to be

the person who executed the within and foregoing deed of conveyance and acknowledged the execution of the same, as his act and deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my seal of office the day and year above written.

(L. S.) J. P. HUGHEY, Clerk.

Filed of record in the Circuit Court, clerk's office of Orange County, Florida, on the 14th day of October, A. D. 1872, and recorded.

J. P. HUGHEY,
Clerk, C. C., O. C.

30 EXHIBIT "C."

This indenture made this 3rd day of May in the year of our Lord one thousand and nine hundred, between the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1892 to 1898 of Great Britain, and whose registered office is in England and doing business in the State of Florida, United States of America, party of the first part, and the Wilson Cypress Company of Palatka, Florida, a corporation existing under and by virtue of the laws of the State of Florida, party of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of nine thousand dollars, lawful money, to it in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and conveyed and confirmed, and by these presents doth grant, bargain, sell, release, remise and convey unto the said party of the second part, and to its successors and assigns forever, all those certain pieces, tracts or parcels of land situated and lying in Lake County, State of Florida, more particularly described as Section 37 of Township 19, south of Range 28, east, and Section 41 of Township 19, south of Range 29, east, and known as the Teresa Rodriguez Grant (sometimes called the Powell or Sanford grant) excepting therefrom two pieces of land heretofore sold and described as follows: N. 1/2 of the N. W. 1/4 of Section 9,

and sixty acres deeded to Smith and Clifford in Sec. 9, between the Mill road and center line running north and south in said section, both tracts being in Township 19, south of Range 28, east, said land hereby conveyed containing in all about 5366 acres of land and water, more or less.

Together with all and singular the tenements, hereditaments thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part in, of and to the above described premises, and every part and parcel thereof with the appurtenances, and particularly the right to collect for all trespass heretofore committed in and upon said lands, and to settle with all trespassers, party of the first part hereby expressly waiving any and all its interests thereto or herein. To have and to hold all and singular the above mentioned and described premises together with appurtenances unto said party of the second part, its successors and assigns forever.

And the said party of the first part, for itself,
31 its successors and assigns, doth hereby covenant, promise and agree to and with the said party of the second part, its successors and assigns, that it will forever warrant and defend said interest against the claims of all persons claiming or to claim by, through or under itself and itself only.

In witness whereof the said party of the first part has cause [caused] its corporate seal to be hereto affixed and these presents to be signed and executed by Frederick Henry Rand, the lawfully constituted and appointed attorney in fact of the said party of the first part, the day and year first above written.

(L. S.) FLORIDA LAND AND COLONIZATION COMPANY, (LIMITED).

By Its Attorney in Fact FREDERICK H. RAND.

Signed, sealed and delivered in the presence of us:
CHAS. S. PARTRIDGE.
H. A. McMULLEN.
(Corporate Seal)

State of Florida,
County of Orange.

Before me, a notary public in and for said state, personally appeared Frederick Henry Rand, the attorney in fact of the Florida Land and Colonization Company (Limited) a corporation as aforesaid, to me well known to be the individual described in and who as such attorney in fact, executed the foregoing conveyance and acknowledged that he signed, sealed and delivered and affixed the corporate seal of said company as the act and deed of the Florida Land and Colonization Company (Limited) as aforesaid; and that he did the same for the purpose therein mentioned.

In witness whereof, I have hereunto set my hand and seal of office at Sanford, state and county aforesaid this 3rd day of May, A. D. 1900.
(Notary's Official Seal)

CHAS. S. PARTRIDGE,
(L. S.) Notary Public.

($9.00 revenue tax stamp duly cancelled). Filed May 10, 1900, Recorded May 14, 1900.

Indorsed: #21. R. 23. In Circuit Court, United States, Southern District of Florida. Enrique del Pozo y Marcos, et al., vs. Wilson Cypress Company, a corporation, etc. Bill of Complaint. Filed May 1, 1907. E. O. Locke, Clerk. W. W. Dewhurst, Jones & Jones, Sols. for Complnts.

32 THE ANSWER OF THE DEFENDANT, WILSON CYPRESS COMPANY, A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA TO THE BILL OF COMPLAINT IN THE SAID CAUSE.

In the United States Circuit Court, Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos, et al., Complainants,

vs.

Wilson Cypress Company, a Corporation Organized and Existing under the Laws of the State of Florida, Defendant.

This defendant now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, says:

1. This defendant answering the first paragraph of complainants' bill says, that it has no knowledge, information or belief as to whether or not the complainants to the said bill are the heirs at law of Miguel Marcos, as alleged in the said first paragraph of said bill of complaint, and neither admits or denies the same but demands strict proof thereof.

33 This defendant further answering the said first paragraph of complainants' bill alleges that the said grant from Spain to the said Miguel Marcos was duly confirmed under the laws of the United States to the said Theresa Rodriguez as the widow of said Miguel Marcos, for and in behalf of herself and her children.

This defendant further answering said first paragraph of said bill denies and says that it is not true that said grant was an inchoate right in said tract of land, as alleged in said first paragraph of said bill, but alleges that the said grant was a grant in absolute property, as shown by the record of same in the proceedings of the commissioners appointed to ascertain

claims and titles to lands in East Florida, printed in Volume 4, American State Papers, referred to in said bill of complaint, and that the said grant was confirmed as and for the complete and perfect title.

This defendant further answering said first paragraph of complainants' bill alleges that it has no knowledge, information and belief as to whether the said lands were or were not surveyed during the sovereignty of Spain over the province of Florida, but demands strict proof thereof, but it alleges that it is advised and informed and upon such advice and information states that the executing and issuing of the grant by the authorities of Spain, as above alleged, did segregate the said lands described in said grant from the public domain of said sovereignty of Spain, and said grant did pass the titles to said lands described in Memorial of said Miguel Marcos, and said grant was from then on in the said Miguel Marcos, and the same was subject to confirmation under the laws of the United States, and the said treaty made by the United States with Spain and was confirmed under said laws and treaty, and such grant and confirmation thereof passed to the said Theresa Rodriguez full and complete title to said property.

34 This defendant further answering said first paragraph of the bill states that it has no knowledge, information or belief as to whether or not the said lands were wild and uncultivated or were ever in the actual occupancy of the grantee or his widow and children during the sovereignty of Spain over Florida and demands strict proof thereof, but it is advised and so alleges that no such occupancy is necessary to complete the title of the said Miguel Marcos or the said Theresa Rodriguez in and to the said lands under the said grant from Spain above mentioned, and defendant further alleges that the complete title to said lands was in the said Miguel Marcos or the said Theresa Rodriguez at the ceding of Florida to the United States by Spain, and that such title was not an equitable claim only as alleged in said bill, but the complete title was vested under said grant in the said Theresa Rodriguez.

This defendant further answering, states that it is advised and so alleges that the said grant of the said land to the said Miguel Marcos, and the said confirmation of same to the said Theresa Rodriguez vested in the said Theresa Rodriguez full and complete title in the said property, to-wit, to the said grant.

and that the said title thereto never was in the United States, and that the said property was always subject to taxation from the time Florida was ceded to the United States by Spain.

2. This defendant answering the second to the tenth paragraphs, inclusive, of the bill of complaint alleges that it has no knowledge, information or belief as to the matters and things stated in said paragraphs, or as to whether or not the complainants to the said bill are the heirs at law of Miguel Marcos, as alleged in said bill or as to said pedigree and relationship stated in said paragraphs of said bill, and neither admits or denies the same but demands strict proof thereof.

35 3. This defendant answering the eleventh paragraph of the bill, states that it has no knowledge, information or belief as to the matters stated in said eleventh paragraph of the bill, and neither admits or denies the same but demands strict proof thereof, and further that it is advised, and so charges, that the matters therein stated render so uncertain the allegations as to relationship and pedigree set forth in the said second to the tenth paragraphs, inclusive, of the said bill of complaint that the said complainants therein are not entitled to maintain this bill on said statements, and the said bill of complaint should be dismissed for that reason and prays the same advantage thereof as though it had demurred to said bill of complaint on account thereof.

4. This defendant answering the twelfth paragraph of the bill of complaint, states that it is untrue that the complainants, or any of them, are owners and holders of any interest or title, whatever, in and to the lands described in said paragraph of said bill.

This defendant further answering said Paragraph 12, admits that the said lands are of the value of much more than the sum of two thousand dollars.

This defendant further answering said twelfth paragraph of said bill, states and alleges that it is untrue, and defendant denies that the said lands are wild, uncultivated, unenclosed and unimproved, and states that it is untrue that the said land, or a large part of same, is almost continually covered by water or incapable or [of] improvement or occupancy, or
36 that the said lands are not now and never have been

in the occupancy of any person, but states the facts to be that the said lands have at all times since the year 1872 down to and on the date of the filing of the bill in this cause and at the present time been and are in the actual, open, notorious and exclusive possession and occupancy of this defendant and those under whom it claims title, as hereinafter set forth.

This defendant further answering said paragraph of said bill, says that at the time of the filing of the bill in this cause, that the said lands were in the actual, open and notorious and exclusive possession of this defendant, and this defendant is advised and alleged and objects that this Honorable Court, sitting as a court of equity, has no jurisdiction of the said bill against this defendant, and that the title of this defendant can only be tried in a court of law, and that this defendant is entitled to a jury trial of the said title and right of possession of said property, and prays the same advantage thereof as though it had demurred to said bill of complaint on account thereof.

This defendant further answering the said twelfth paragraph of the said bill, states that it is untrue that the shares and interests of the complainants in the said lands exceeds the sum of two thousand dollars, and alleges that the said complainants have no interest, whatever, of any value whatever in said property.

5. This defendant answering the thirteenth and fourteenth paragraphs of the bill, says that it is informed and advised, and so alleges that the said grant from Spain to the said Miguel Marcos was duly presented by the said Theresa Rodriguez to the Board of Land Commissioners of the United States for ascertaining claims and titles to lands in East Florida under the treaty between Spain and the United
37 States, ceding Florida to the United States under the Acts of Congress of the United States in reference thereto, and was favorably reported by said Board and was ascertained and declared by said Board to be valid and was so reported by said Board, and said grant was fully and duly confirmed under the laws of the United States and all interest of the United States in and to said lands were released and confirmed to the said Theresa Rodriguez, her heirs and assigns by Act of Congress of the United States prior to the

year 1845, and that no patent was necessary after said Act of Congress to convey all right, title and interest of the United States to her and her heirs and assigns, and that this defendant is not informed or advised whether or not such confirmation of said grant is confined to the extent of a league square to be located within the limits of the original claim, and bounded by sectional lines and to be of quantities of not less than one section, as alleged in said paragraph thirteen, and neither admits or denies the same but demands strict proof thereof. This defendant is not informed and has no information or belief as to whether or not the person or persons to whom said grant was confirmed was the ancestor or were the ancestors of complainant, or whether or not proceedings were ever had before the District Judge of the Superior Court for the District of East Florida in reference to said claim, or whether or not the title to said land was confirmed only to the extent of one league square, to be located within the bounds of said original grant, and demands strict proof of all said matters, but this defendant does allege that the said grant was duly and properly made in full property by Spain to said Miguel Marcos and duly and fully confirmed by the United States and vested title in the said Teresa Rodriguez without further or other acts done or to be done in reference to same and without the issue of any patent thereof.

38

6. This defendant answering the 15th paragraph of the bill, states that it is not informed and has no knowledge or belief or information as to the holding of the judicial and executive branches of the government of the United States, that the quantity of land contained in a league square was 4,438.68 acres and demands strict proof of the same, but this defendant is advised and so alleges that if such were the facts, such holding did not affect the title vested by the said grant from Spain in the said Miguel Marcos or the confirmation of same by the United States to the said Theresa Rodriguez, but that full and complete title was vested by said grant as aforesaid.

This defendant further answering the fifteenth paragraph of the bill, says that it is advised that the grantees under grants from Spain, upon application to the surveyor general, could have a survey made of the lands contained and described in the said grants to them from Spain, confirmed by the

United States, and that for its own convenience in disposing of its portion of the lands in said territory of Florida that the United States required the Surveyor General of the said territory to make survey of the lands included in the said grants, but that whether or not such survey was made in nowise affected the title of the said grantees under said grants, and that the complete title was vested by virtue of the said grant and by the said confirmation of same.

39 And this defendant further answering said paragraph fifteen, alleges that the said grant so confirmed to the said Theresa Rodriguez was duly and properly surveyed by the United States and under its authority, and duly and properly set apart and segregated by the authorities of the United States prior to the year 1845 and prior to the sales of said property for taxes by the said John Simpson, as sheriff and ex-officio tax collector of Orange County, Florida, mentioned in said bill of complaint, and prior to the said deed issued by him, dated the 5th of July, 1852.

This defendant further answering said fifteenth paragraph of the bill of complaint, says that it is advised and so charges that the said Act of Congress of March 3, 1807, referred to in said paragraph has no application, whatever, to the said lands granted by Spain to the said Miguel Marcos and confirmed by the United States to the said Theresa Rodriguez, and in nowise affected or interfered with the title or right of possession of the said Miguel Marcos or the said Theresa Rodriguez therein under the treaty and after the confirmation of said grant.

This defendant further answering said paragraph fifteen of the bill of complaint, alleges that it has no information and belief as to who were the ancestors of the complainants, or where their ancestors resided as alleged in said paragraph, or where their descendants resided, or whether complainants or any persons under whom they claim have been within the limits of the State of Florida since the passage of said Act of Congress, approved May 23, A. D. 1828, but demands strict proof thereof.

40 7. This defendant answering the sixteenth paragraph of the bill, states that it is not true that the said grant to Miguel Marcos and confirmed to Theresa Rodriguez was never surveyed and segregated, but that the said

grant was surveyed by the United States prior to the said issuing of the said tax deed, dated the 5th of July, 1852, made by John Simpson, sheriff and ex-officio tax collector of Orange County, Florida.

And this defendant further answering, stated that the order for alleged patent from the United States under which complainant claim, issued on the 12th of February, 1894, recognized the survey of the said lands which had been made by the United States many years prior thereto, and that the said survey had been recognized by complainants and those under whom they claim and was the survey upon which the said patent issued, and that these complainants are estopped on account thereof from questioning the same, but have recognized and admitted the said survey of said grant made by the United States to be correct, and claimed thereunder as shown by their bill of complaint and the patent issued upon the said survey.

This defendant further answering, states it is advised and so alleges that no survey of the said grant was necessary in order to render the same subject to assessment for taxation or sale for the non-payment of taxes, but that the said grant was sufficiently defined as a tract of land, and the title to the said grant was full and complete at the time the said taxes were levied, assessed and accrued upon the said lands for which the same were sold by the said John Simpson, sheriff and ex-officio tax collector of Orange County, Florida, on the 5th of July, 1852.

41 8. This defendant answering the seventeenth paragraph of said bill of complaint, states that it is not true that until February 12, 1894, Theresa Rodriguez or those claiming under her were excluded from the possession of the said lands by the United States, and that it is untrue that the United States had both the legal title and possession and right of possession of said lands, or that the occupancy of said lands by Theresa Rodriguez or those claiming under her, or claiming her title, was a trespass upon said lands, and that it is untrue that the complainants or those under whom they claim, or Theresa Rodriguez or those claiming under her were unable to take possession of said land, or to locate the same because the United States claimed the entire tract as public land.

This defendant further answering said paragraph seventeen, says that it is advised and so charges that no claim of the lands included in said grant by the United States in any manner, whatever, affected the title of Theresa Rodriguez, and those claiming under her in and to said lands included in said grant, but that full title to said lands vested in said Miguel Marcos in the said grant from Spain and in the said Theresa Rodriguez by the said grant and confirmation thereof by the United States, as hereinabove alleged.

9. This defendant answering the eighteenth paragraph of the bill of complaint, states that it is untrue and that it denies that the United States was in possession of the said lands granted to the said Miguel Marcos and confirmed to the said Theresa Rodriguez, or had legal title thereto or claimed to be the owner thereof on the 5th of July, 1852, as alleged in said eighteenth paragraph of the said bill.

This defendant further answering the eighteenth
42 . paragraph of the said bill, alleges that on the 5th of July, 1852, the said grant so confirmed to the said Theresa Rodriguez was subject to taxation, and was sold and conveyed by John Simpson, as sheriff and ex-officio tax collector of Orange County, Florida, to one, John Starke, for the unpaid taxes due thereon for the years 1845 to 1851, inclusive, all in accordance with the laws of the State of Florida in such cases provided.

The defendant further says that it is untrue that during said years or at the time of the said sale of said land by the said John Simpson, as sheriff and ex-officio tax collector, the title to said lands was held by said United States or that the United States had any possession of the same, or that the said land was an unsegregated part, and alleges that the tract of land sold was a distinct, well-known grant of land from Spain, as aforesaid, and confirmed to the said Theresa Rodriguez, and that the said lands, as such grant, was assessable as such upon the tax rolls and subject to sales for the non-payment of taxes.

This defendant further answering subdivisions numbered 2, 3 and 4 of said paragraph eighteen, denies the said matters therein contained.

This defendant further answering subdivision 5 of said paragraph eighteen, alleges that it has no knowledge, information

and belief as to whether the original of said deed from the said Simpson, as sheriff and ex-officio tax collector, had subscribing witnesses or not, and demands strict proof of said allegations, and this defendant denies that there exists no other evidence of said sale and conveyance of said land.

43 This defendant further answering said subdivision 5 of paragraph eighteen, alleges that it is advised and so charges that as matter of law, if the said alleged deed from the said Simpson to the said Starke had no witnesses and was never acknowledged or approved for record and its transcript on the record of Orange County was wholly unauthorized, that this Honorable Court, sitting as a court of equity, has no jurisdiction to entertain complainants' bill praying a decree cancelling the said alleged deed and the alleged record thereof, but said deed would be void upon its face and the record void and illegal, and a court of equity would have no jurisdiction to decree the cancellation of the said deed or of the said record, and this defendant prays the same advantage of said matter as if it had demurred to said bill of complaint upon said ground.

But this defendant further answering paragraph eighteen of the said bill, states that it is advised that the said deed of the said John Simpson, as sheriff and ex-officio tax collector to the said John Starke, is not null and void for all purposes, even if the evidence should establish that there were no witnesses to the signature of the said John Simpson, as sheriff and tax collector, and that the same had not been acknowledged, but that the same constituted, at least, a claim of title in the said John Starke and vested in the said John Starke as purchaser of the property from the said sheriff the right to a deed executed with witnesses thereto, and was sufficient equitable title to authorize the assessment of the said property to the said Starke during the years 1867, 1868 and 1869.

44 This defendant further answering said paragraph eighteen of the bill, alleges that it denies that the said sale of the said John Simpson, as sheriff and ex-officio tax collector, for taxes on the said grant for the years 1845, 1846, 1847, 1848, 1849, 1850 and 1851, was not authorized by law upon the said grounds as alleged in said paragraph in said bill, and alleges that the said lands were subject to taxation and were assessed and sold for taxes in accordance

with law by the said John Simpson, as sheriff on the said 5th day of July, 1852.

10. This defendant answering the nineteenth paragraph of the bill, says that it is untrue that the said lands therein mentioned as assessed in the name of John Starke was an unsegregated part of the said grant or that the said survey had not been made and approved by the proper authorities of the United States as required by law, and that it is untrue that the United States owned or had any title to the said lands so assesses [assessed] to the said John Starke mentioned in paragraph nineteen or any possession thereof, or was holding or treating the same as public land during the said years mentioned in said paragraph.

Defendant further answering said paragraph nineteen, says that it is advised and so charges as matter of law that the facts were, even if the United States claimed ownership of the said grant or treated the said lands as public lands, the same did not affect the power and authority of the state to assess and sell the same for taxes due to the state, the title to the said grant being in fact in a private individual, to-wit, in the said Theresa Rodriguez, at the time of said levy and assessment of taxes upon said lands and the sale thereof, to-wit, in the years 1867, 1868 and 1869.

Defendant further answering the said paragraph
45 nineteen, admits that the said grant to the said Theresa Rodriguez was duly assessed for taxes to the said John Starke for the years 1867, 1868 and 1869, and denies that the assessment was null and void, but alleges that the same was a valid and legal assessment for taxes upon said property for said years, and defendant admits that on the 23rd of April, 1872, that Robert C. Partin, as tax collector of Orange County, Florida, executed a deed for said grant to one William Mills, and that the said deed was duly recorded as alleged in said paragraph nineteen.

11. This defendant answering paragraph twenty of the bill of complaint, denies that the lands were in the adverse possession of the United States in 1867, 1868 and 1869, or at any time since the ceding of Florida to the United States or since May 23, 1828, and further states that it is advised that whether or not the United States claimed to be owner thereof

would not affect the right and authority of the state to assess the said lands for taxes and to sell the same for the non-payment of taxes, the title being vested in the said grant from Spain and confirmed by the United States to the said Theresa Rodriguez.

This defendant further answering Paragraph 20, denies that the said John Starke had any interest in said lands, but alleges that he was the owner of said lands and had a legal and an equitable right, title and interest in the said lands and right to the title thereto, which rendered the same subject to assessment in his name as the owner thereof.

This defendant denies that the said lands were not
46 sufficiently described in said assessment to identify the same for the purposes of such assessment, and avers that the same were sufficiently identified upon such assessment for the said years as aforesaid, and that the said description by section numbers is generally known and recognized as the description of the said grant.

Defendant further answering said paragraph twenty, denies that the said tax deed from the said Robert C. Partin, tax collector for Orange County, Florida, to said William Mills, was null and void for any of the said reasons stated in paragraph eighteen, and alleges that the said lands were subject to taxation during the years the same was so assessed mentioned in the bill and at the time of the said sales in 1852 and 1872, and that the said lands were properly assessed and sold as the property of John Starke in April, 1872, and that the said deed was properly made by the said Robert C. Partin, as tax collector, and that said deed in any event is competent evidence of the purchase by said William Mills of said lands at said sales for taxes and vested in him an equitable interest in and a right to a deed to said property from the officer authorized to execute same.

And this defendant further answering paragraph twenty, denies the said subdivisions two to thirteen, inclusive of said paragraph twenty and demands strict proof of same.

This defendant further answering said subdivision fourteen of said paragraph twenty, states that it is advised and so alleges that the said matter contained in the said subdivision is too vague and uncertain to be answered, and that the complainants should set forth and allege in said bill of complaint each and every of the specific grounds and matters of fact

upon which complainants insist the said alleged tax sale and deed thereunder were void or voidable, or subject to cancellation, and defendant claims the same benefit and advantage thereof as if it had raised the same by demurrer to said bill.

47 12. This defendant answering paragraph twenty-one of the bill, says that it denies that any such conspiracy existed as is alleged in said paragraph, but states that neither the said Theresa Rodriguez or any one claiming under her, or the said complainants or either of them, or any one for them, have ever paid to the State of Florida or to the County of Orange or the County of Lake any taxes upon the said lands, but have utterly failed and refused so to do, and that the said lands were properly assessed for said taxes for the years 1845 to 1851, inclusive, and sold for the non-payment of same on the said 5th of July, 1852, and properly assessed for taxes for the said years 1867, 1868 and 1869, and sold for the non-payment of same on the 23rd of April, 1872, by the said Robert C. Partin, as tax collector of Orange County, Florida, and were assessed and sold for said taxes for the reason that the same had not been paid by any of the persons interested in the said title to the said property, and this defendant submits that the said complainants and all persons claiming under the said Theresa Rodriguez should not be permitted by the courts, after failing to pay the taxes for many years upon the said lands and after the assessment of said taxes and sale of the property for non-payment of same, to have such sales declared illegal on the grounds set forth in said paragraphs twenty and twenty-one.

48 13. This defendant answering paragraphs twenty-two and twenty-three and twenty-four, says that it is true that the said William Mills and wife on the third day of May, 1872, executed a deed to the said George C. Powell, and conveyed the said lands to the said Powell and the same was duly recorded as alleged in the bill.

And this defendant further states that immediately on the executing of the said deed to the said Powell, to-wit, in May, 1872, that the said Powell entered into the actual, open and exclusive possession of the said property under the said deed and made improvements thereon and cultivated the same and used the same, and lived upon and cultivated portions of

the same and planted an orange grove thereon, and built and erected a mill thereon, and cut and used the wood and timber thereon and exercised acts of actual ownership in the possession of all of the same, and conveyed portions of the same to others who lived thereon under the said Powell down to the time of the conveying by the said Powell to the said Henry S. Sanford as mentioned and described in the said bill. And that George W. Powell also held such possession of part of Section 9 in said Grant under said George C. Powell during said times.

This defendant says that it is untrue as alleged in said bill that such occupancy and acts of ownership of said Powell was confined only to part of Section 9, and was continued but for a short time, but that such exercise of possession and acts of ownership covered the entire property so mentioned and described in the said deed from said William Mills to the said Powell.

This defendant further answering the said paragraph twenty-three, says that all of the lands mentioned and described in the said deed from the said Robert C. Partin, as tax collector, to the said William Mills and in deed from the said William Mills to the said George C. Powell, although described by section numbers, is one entire tract known as the "Theresa Rodriguez Grant," and that the said grant is a known lot of land within the meaning of the laws of the State of Florida.

49 This defendant further answering paragraph twenty-four of the bill of complaint, states that it is untrue that complainants or those under whom they claim were precluded from bringing any action for the recovery of said lands during the occupancy of same by the said Powell, and it is untrue that the said lands were held during the said time or claimed by the United States or held to be public lands of the United States.

This defendant further answering said paragraph twenty-four, says that it is advised and so charges that as matter of law the title to the said lands during said period was not in the United States, and that no claim of the United States to the contrary or mere opinion of the officers in the Land Office of the United States as to the status of the title of said lands in law would preclude or prevent the real owners of the title of the land from bringing any action necessary to protect their title or right of possession against one in occupancy of the

land, and this defendant prays the same advantage of said matter as though it had demurred to the said bill upon said ground.

14. This defendant answering paragraph twenty-five of said bill, states that it is informed and believes and so alleges that besides the title held by Henry S. Sanford under deeds to him from George C. Powell, dated the 22nd day of October, 1881, and from George W. Powell, dated the 15th of November, 1881, hereinafter referred to, that the said Sanford acquired the title to the said lands involved in this suit under and by virtue of the certain deed from J. E. Hughey, clerk of the Circuit Court for Orange County, Florida, to
50 the said Henry S. Sanford, dated the 25th of January, 1882, based upon the previous sale of said lands for the non-payment of taxes thereon due to the said State of Florida and County of Orange, said deed being recorded January 28th, 1882, in Book 1 of the records of Tax Sales or Deeds, pages 126 to 128, inclusive, and said Sanford also acquired title to portions of same by deed from A. Lassiter and wife, and L. P. Hughey hereinafter mentioned, and that on the 5th of May, 1879, the said lands were sold to the State of Florida by the tax collector of Orange County, Florida, for the non-payment of the taxes thereon for the year 1878, and the said certificate of the said sale was transferred on the 7th of February, 1882, by the comptroller of the State of Florida to one James E. Ingraham, thereby transferring the title of the said state to the said James E. Ingraham who thereafter transferred, assigned and conveyed to said Henry S. Sanford all his right, title and interest in the said property under the said certificate, to-wit, on June 22, 1882, and also on May 5, 1879, the tax collector of the County of Orange sold to the State of Florida for the non-payment of taxes for the year 1878, another protion [portion] of said lands described as southwest quarter of southeast quarter of Section 34, Township 20, South, Range 31, East, the same being sold to the State of Florida, and thereafter the Comptroller of the State assigned the said certificate to the said James E. Ingraham, who assigned the same to said Henry S. Sanford, and also on the 5th of May, 1879, the said tax collector of the County of Orange sold and conveyed to the State of Florida another portion of the said land described as the east half of Section 9,

Township 19, South, Range 28, East, and thereafter the said Comptroller of the State of Florida transferred and assigned the said certificate representing the said title of the state, based on said tax sale, to one Thomas E. Wilson, and the said Wilson on May 15, 1882, transferred and assigned
51 the said certificate to the said Henry S. Sanford, and that on the 9th of July, 1887, the clerk of the Circuit Court for Lake County issued a tax deed to one M. O. Crumpler for the west half of the northeast quarter of the southwest quarter, Section 16, Township 19, South, Range 28, East, recorded in Book 68, page 165, records of the County of Lake, State of Florida; that on the 24th of April, 1888, said clerk of the Circuit Court issued a tax deed to one J. C. Krejco, purporting to convey the northwest quarter of Section 21, Township 19, South, Range 28, East, recorded in Tax Book 1, page 60, records of Lake County, Florida; that on August 4, 1891, the clerk of said Circuit Court for Lake County issued a tax deed to Buffom Land and Trust Company purporting to convey the east half and the southwest quarter of the southwest quarter of Section 4, Township 19, South, Range 28, East, recorded in Record Book of Tax Deeds 1, page 380, of said Lake County, Florida; that the foregoing are the only tax sale deeds and certificates upon any portion of said land known to this defendant, except the said sales for the non-payment of taxes thereon made by the said John Simpson, as sheriff and ex-officio tax collector of Orange County, Florida, on the 5th of July, 1852, and the sale for the non-payment of taxes made by the said Robert C. Partin, as tax collector, to said William Mills, dated the 23rd of April, 1872, above mentioned.

15th. This defendant answering the twenty-sixth paragraph of said bill, states that it is true and it admits that on the 27th of October, 1881, said George C. Powell conveyed by deed in writing to one Henry S. Sanford all of the said above mentioned lands previously conveyed by the said William Mills to the said Powell, which deed from Powell to said Sanford is recorded on 2nd day of February, 1884, in Book "Y," page 962, of the public records of Orange
52 County, Florida; that this defendant denies that at the date of the said deed the complainants and other persons claiming title under the said Miguel Marcos or Theresa

Rodriguez were excluded from their said lands by the United States. This defendant admits that on the 15th day of November, 1881, one George W. Powell conveyed to the said Henry S. Sanford the portions of Section 9, Township 19, Range 28, mentioned in said Paragraph 26 of said bill, and that the said deed has been recorded as stated in the said paragraph. This defendant denies that at the time of the date of the said deed the complainants or any other persons claiming title under the said Miguel Marcos or Theresa Rodriguez were excluded by the United States from the said lands.

This defendant further answering paragraph twenty-six, states that the said Henry S. Sanford also acquired title to said lands under and through the said deed from the said J. P. Hughey, clerk of the Circuit Court of Orange County, Florida, to said Henry S. Sanford, dated January 25, 1882, recorded in Book 1, records of tax sales or deeds of said county, pages 126-128, inclusive, hereinabove mentioned, and also acquired title to protions [portions] of said lands through a deed from A. S. Lassiter and wife, dated July 26, 1882, recorded February 2, 1884, in Book No. 3, page 177, of the records of Orange County, Florida, and through a deed from L. P. Hughey and wife, dated the 15th of October, 1883, recorded February 2, 1884, in Book "Y," page 964, records of said county, and also under said other tax deeds, certificates and claims herein set forth.

16. This defendant answering paragraph twenty-seven of the bill, alleges that it is untrue, as alleged in said paragraph, that said Henry S. Sanford never took or held possession or occupancy of said lands or performed any acts of ownership or possession of said lands, or that the same were in the adverse possession of the United States or of the State of Florida, as alleged in said paragraph, but states the facts to be that the said Henry S. Sanford and Edwin Dawes, George Thompson and Anthony Norris, the trustee of the Florida Land & Colonization Company, Ltd., and the said company received possession of the said land under the deeds severally made to them mentioned in said bill and in this answer, and used and cultivated said lands and had and maintained the actual, open and notorious possession, possession of the same down to and including and at the time of the executing of the deed from said Florida Land

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& Colonization Company to this defendant mentioned in the bill of complaint, and that this defendant has continuously had the open, notorious, actual and exclusive possession of the said lands, and has used the same as its own and exercised the usual acts of possession and ownership of such property, and has had persons on the said property in the actual possession of the said property representing this defendant, and that said persons were in the actual possession of the said property as the agents and representatives of the defendant the time of the filing of the complainant's bill in said cause, and that said defendant and its agents are still in the possession of said property at the date of the filing of this answer.

17. This defendant answering Paragraphs 28 and 29, state that it is true, as therein alleged, that the said Henry S. Sanford conveyed the said lands by deed to the said Edwin Dawes, George Thompson and Anthony Norris, Trustees of the Florida Land & Colonization Company, and that the said Dawes and the said Thompson conveyed the said land to the said Florida Land & Colonization Company, said first mentioned deed being dated as stated in said paragraph twenty-eight, and said deed to said company being dated December 2, 1899, and recorded in Book 35, page 541 of records of Lake County. And that on the 3rd of May, 1900, said Florida Land & Colonization Company conveyed the said lands to this defendant as stated in said paragraphs. Defendant denies that the said complainants or any one claiming under the said Miguel Marcos or Theresa Rodriguez were excluded by the United States from the said lands at the dates of either of the said deeds above mentioned.

54 18. This defendant answering paragraph thirty of the bill, states that the said Section 41 mentioned in said paragraph is a part of the Theresa Rodriguez Grant, and as such is included in the said sales and conveyances mentioned and described in said paragraph.

19. This defendant answering the thirty-first paragraph of said bill repeats the allegations hereinabove contained, stating and alleging possession, cutivation and use of said lands and property by the said Powells, and the said Sanford and the said Florida Land & Colonization Company, and the said

trustees of the said company and of this defendant, and further states that such cultivation, use and possession of said lands since the year 1872 by this defendant and those under whom it claims, as aforesaid, has been continuous adverse to the complainants and those under whom they claim and to the world, and that the same has not been stopped or interfered with by the said complainants or those under whom they claim, and that the said Powell and the said Sanford and the said Florida Land & Colonization Company, Ltd., and this defendant made said improvements on the said property and expended large sums of money thereon without objection from the complainants or those under whom they claim, and that the said complainants and those under whom they claim are barred and estopped by the Statutes of Limitation of the State of Florida, and by their laches, and also by their acquiescence in permitting defendant and those under whom defendant claims to go upon the said lands and to exercise possession and ownership over same and expending large sums of
55 money thereon, and said complainants are so barred from maintaining this bill in a court of equity against this defendant for the purposes of cancelling and setting aside the several titles and deeds to and under which this defendant claims title to said property as prayed in said bill of complaint.

This defendant further answering said paragraph thirty-one, states that immediately after it acquired said title to said lands, it built a house upon said land and has an agent now and has had ever since it acquired said title, upon the said lands in actual possession of same and who excludes every other person from such possession, and that it is untrue that said lands are wild and unimproved and unoccupied, and it is untrue that the defendant is not in actual possession thereof, but that in fact at the time of the filing of the bill herein and at the time of the filing of this answer that this defendant was and is in the bona fide, actual, open and notorious possession of such lands, and that the same are occupied by the agents and tenants of this defendant, and that the complainants are not entitled to maintain this bill in a court of equity or to obtain the relief prayed in said bill under the circumstances stated in this paragraph of defendant's answer.

Defendant further answering paragraph thirty-one of the bill, states that it is untrue that ever since the issuing of the said patent from the United States, to-wit, the 26th of June,

1895, or at any time since the 5th of May, 1852, that complainants or those under whom they claim title, or any of them have been in possession of said lands subject matter of this suit, and that it is absolutely untrue and without any basis in fact that the complainants have ever been in possession of the said lands or were in possession of the same at the time of the filing of the bill herein.

56 20. This defendant answering paragraphs thirty-second and thirty-fifth of the bill of complaint, alleges that the complainants and those under whom they claim have not in any respect been diligent in the prosecution of their alleged rights, if they have any, in the said above mentioned lands, but have been guilty of gross laches in asserting any such claims or rights against these defendants in the said lands; that the said sale for non-payment of taxes upon the said lands by the said John Simpson, as sheriff and tax collector of Orange County, Florida, to the said John Starke was made on the 5th day of July, 1852, more than fifty years before the filing of the bill of complainant herein, praying the cancellation of said deed; that the said deed from the said Robert C. Partin, tax collector for Orange County, dated the 23rd of April, 1872, was executed and recorded thirty-five years before the filing of the said bill of complaint of complainants herein praying the cancellation of the said deed and the record thereof, and that the said deed from the said Mills to the said Powell was executed and recorded more than thirty-four years before the filing of the bill herein, and the deeds from the said Powell to the said Sanford were recorded twenty-three years and executed twenty-six years before the filing of the bill of complaint herein praying the cancellation of same and the record thereof, and that the deeds from said Sanford to the said Trustees of the Florida Land & Colonization Company were executed and recorder [recorded] twenty-three years before the filing of the bill herein, and that the deed from the Florida Land & Colonization Company to defendant was executed and recorded on the 3rd of May, 1900, and the bill of complaint herein was filed on the 1st of May, 1907, being but two days less than seven years between the date of the executing of said deed to this defendant and the
57 filing of the bill herein; that, as shown by the said bill, the survey was made by the United States of

said lands in 1847, and that on the 12th of February, 1894, the said grant was by the Land Department of the United States declared to be a valid, confirmed, private grant, and that more than thirteen years elapsed from the date of said order before the filing of the bill herein to cancel the several conveyances above mentioned, and nearly twelve years elapsed from the date of said patent, to-wit, from the 26th of June, 1895, to the date of the filing of the bill herein; that the said bill and particularly the said thirty-second and thirty-fifth paragraphs thereof, state no facts or reasons, whatever, excusing the said gross laches of the said complainants and those under whom they claim title to the said land from not sooner taking action to have their said rights recognized by the said Land Department of the United States, or from bringing suit in this Court after the alleged action of the said Land Department recognizing the said grant to cancel the conveyances described in the bill and prayed therein to be decreed to be so cancelled. The said bill states no facts, whatever, excusing the said complainants from not taking action prior to 1890 in reference to the said recognition of the said grant by the said Land Department of the United States, and alleges no action by complainants or those under whom they claim prior to 1890; that it is untrue, as alleged in paragraph thirty-five of the bill, that soon after the executing of the deed to this defendant that the complainants began suit against defendant to cancel said alleged deed and states the facts to be that the deed to this defendant was made on the 3rd of May, 1900, and the bill filed in this Honorable Court by the
58 complainants against this defendant referred to in said paragraph was filed on June 24, 1902; that the said order of the Land Department recognizing the said grant was made more than seven years before the filing of the said first bill by complainants herein against this defendant and the said patent from the United States was issued within two days of seven years before said last mentioned bill was filed.

This defendant further alleges that the said order dismissing the said above mentioned bill brought by complainants or some of them against this defendant was filed on the 4th of April, 1904, and the present bill herein was filed on the first of May, 1907, nearly three years thereafter and twelve years after the issuing of the said patent under which complainants claim title.

This defendant denies and says that it is untrue that the complainants were not in fault in and about the prosecution of the said bill heretofore filed by the complainants or some of them against the defendant in this Honorable Court; that it was the duty of complainants to have kept in communication with their counsel and to have assisted their counsel in obtaining and having taken the evidence in support of their said bill, but the record in said case shows that the reason why such evidence was not taken was that the said counsel for complainants in said former bill were not kept in communication with complainants or complainants with them, so as to furnish the said evidence, and this defendant submits that such failure of complainants to keep in communication with their counsel and to furnish the evidence to support the said bill is no legal excuse or reason for failure to prosecute said suit, and no legal reason or excuse, whatever, for failure to bring and file the present bill for nearly seven years
59 after the executing and recording of the deed under which defendant claims, and twelve years since the executing of patent under which complainants claim, and more than thirteen years since the order of the United States Land Department recognizing the said grant as alleged in the bill, and that no excuse, whatever, is presented for the delay for the long number of years to take any action in reference to the deeds upon the several tax sales upon said property hereinabove stated.

This defendant further answering said paragraph thirty-second, says that it is untrue that the United States ever refused to recognize the said grant to the said Theresa Rodriguez and children, but that the said grant was fully confirmed on March 3, 1826, and title to same then vested in the said Theresa Rodriguez and the said lands were known upon the public surveys as such grant to said Theresa Rodriguez, and a survey of same was made some time in the year 1847, upon and under which survey the said complainants now claim title. This defendant denies that the survey of the said grant as a private land claim did not become effective as a segregation of the said lands from the public domain until June 18, 1894, as alleged in said paragraph thirty-two of the bill, but alleges that the said grant, for the purposes of taxation, was segregated when the said treaty was made, ceding Florida to the United States from Spain and at the time of the con-

firmation of the said grant hereinabove mentioned, and that no survey was necessary to effect such segregation, but that if said survey was necessary the same was made in 1847 or prior thereto.

60 Defendant answering paragraph thirty-five, further says this defendant has no knowledge or information in reference to whether or not complainants sent an agent to Florida to look after said lands or when such agent was sent, and demands strict proof thereof and that the allegations of the said bill of complaint do not set forth when such agert went to the State of Florida or attempted to take possession of said lands, but this defendant does allege that neither the complainants or their said agent, or any person whom complainants sent over did in fact take any possession of said land or ever were in possession of same or ever exercised any ownership over same.

This defendant further answering said paragraph thirty-five, says that it is untrue that from and after June 26th, A. D. 1895, the predecessors of complainants in title were for the first time entitled to the possession of the said lands, and it is untrue that from and after said date said lands first became subject to taxation, but that the said Theresa Rodriguez and those claiming under her were entitled to possession of the said lands from the date of the confirmation of the said grant by Congress, and that said lands became subject to taxation either from the time of the date of the ceding of Florida to the United States, or certainly from the date of the confirmation of the said grant.

This defendant further answering said bill of complaint, says that the said complainants are not entitled to maintain this suit against this defendant, because said complainants have been guilty of gross laches in waiting for said long periods of time hereinabove set forth since their alleged rights accrued in and to said lands, and after the executing of the said deeds sought and prayed to be cancelled in and by the said bill of complaint and the recording of same before instituting this suit; that the complainants during all

61 these years have abandoned said lands and refused and neglected to pay the taxes thereon or exercise any acts of ownership over said lands; that it is only now that the said lands have become valuable and increased largely in price over and above the value of same when they were

sold for taxes that the complainants seek to recover the same; that said lands are now worth many times as much as they were worth when said deeds or either or any of them above mentioned were made, and when said lands were purchased by this defendant and by the several grantees in the several deeds herein sought to be cancelled, and that said complainants have wholly and utterly failed to pay any taxes upon the said property or to attempt to make any use of the same, but abandoned the same, and that this defendant and those under whom it claims title have continuously paid the taxes upon the said property and had the possession of same during all said years.

This defendant further answering, says that after this long lapse of time since the making of the said sales for non-payment of taxes and the executing and recording of each and every of the deeds herein sought to be cancelled that portions of the evidence above mentioned and such as might be established by witnesses have been lost, and in some cases the records upon which such sales and deeds were based, lost and destroyed, and that under all of these conditions, this Honorable Court, sitting as a court of equity, will not entertain the said bill now brought by complainants herein, but will decree complainants to be barred by their said delay and laches in bringing said bill.

This defendant further answering, says that complainants are also estopped by having permitted defendant and those under whom it claims to take and hold possession of said property for many years, and to make large expenditures for improvements thereon without complainants or those under whom they claim taking any action in any manner to prevent same.

62 21. This defendant answering the thirty-third paragraph of the said bill of complaint states that it has no knowledge, information or belief in regard to the matters therein alleged and demands strict proof thereof, but this defendant alleges that it is advised and so charges that the title of the said Theresa Rodriguez and those claiming under her and under the said Miguel Marcos was a complete and perfect title under the said grant from Spain as confirmed by the United States and was in no wise affected by any patent or other conveyance of the United States to the trustees of the

internal improvement fund of the State of Florida and that the said trustees recognized that the said grant from Spain vested a complete and perfect title and said trustees therefore released the said portions of the said grant which had been attempted to be certified to them by the authorities of the United States, and that the same was a recognition of the complete title under the said grant and confirmation thereof.

This defendant further answering said thirty-second and thirty-fourth paragraphs of the bill of complaint states that it has no knowledge or information except as stated in the bill as to what applications or efforts the complainants, or those under whom they claim, in the year 1890 made to the General Land Office of the United States to have a patent issued to said land, nor what ruling upon or replies to said application were made by said General Land Office, but this defendant states that none of the said matters are of any consequence herein and do not in any manner affect the title under the said Spanish grant in and to the said Theresa Rodriguez, or those claiming under the said tax deeds and other deeds on the said
63 property hereinabove mentioned.

This defendant further answering, states that it is informed that on the 12th of February, 1894, the Secretary of the Interior did make on order that a patent issue to the said grant and that on the 25th of June, 1895, the said patent from the United States to the heirs of the said Theresa Rodriguez was issued and thereafter recorded in the public records of Lake County, Florida. This defendant states that neither this defendant nor the Florida Land & Colonization Company had any actual knowledge of the issuance of the same, as alleged in said paragraph thirty-four, and this defendant further alleges that the title to the said grant was vested in the said Theresa Rodriguez and her heirs under the said grant from Spain under said treaty aforesaid before the issuing of said patent and the said patent was but a recognition by the United States of the said previously executed title under said Spanish grant and was not necessary to vest and did not in and of itself vest the title to the said lands in the said Theresa Rodriguez or her representatives or heirs.

22. This defendant answering the thirty-sixth paragraph of the bill states that it is untrue and it denies that the sales

and conveyances stated in the bill from the tax deed to John Starke to the deed of this defendant are void and convey no title, but states that the same was in all respects regular and in accordance with law and vested the title in and to the said land in this defendant.

And the defendant further answering said bill alleges that it is advised and so states that, as a matter of law, if the defects existed in the said deed to John Starke and in said deed from Robert C. Partin to William Mills, that this court sitting as a court of equity would have no jurisdiction to
64 entertain a bill to cancel the same and that the complainants should bring their suit at law to recover the said lands held and claimed by the defendants under the said deeds above mentioned.

23. This defendant answering the thirty-seventh paragraph of the bill here repeats the allegations of this answer above made upon the same subjects and matters as are contained in said thirty-seventh paragraph, and alleges that it is advised and so charges that the law is that no patent was necessary to evidence title in the representatives of Theresa Rodriguez, and that it is immaterial whether any patent was issued or whether or not the same was record evidence of the action of the United States.

And this defendant further answering says that no matter what statement appears in the face of the patent as to the approval of the survey of said lands that said survey was made before the sale of said lands by the said John Simpson as sheriff and ex officio tax collector in July, 1852, and this defendant denies that the law in reference to said grant and effect thereof and title thereunder is correctely stated in said thirty-seventh paragraph of said bill and denies that the title was in the United States to the said lands prior to the alleged approval of the survey of the lands mentioned in said paragraph in said bill.

This defendant further answering said paragraph states that it is untrue that the possession of this defendant and those under whom it claims has been only periodic, but states that it and those under whom it claims have had the continuous adverse and exclusive possession of said lands for many years and for more than seven years prior to the filing of this bill as herein above fully set forth and that said possession is ad-

verse to complainants and those under whom they
65 claim, and that the defendant ever since the date of this deed has been in the continuous actual, adverse, open and exclusive possession of all of the said lands, and that the Florida Land and Colonization Company was in similar possession of said property from the date of the deed to it, and the trustees of the said company also had the like possession of such lands ever since the date of the deed to them to the date of their conveying same to the Florida Land & Colonization Company, and said Sanford had like possession thereof, and that the defendant and each of the said persons and corporations under whom it claims had the continuous actual, adverse possession of all of said lands.

This defendant further answering said paragraph of said bill states that Henry S. Sanford had a claim of title to said lands and portions thereof under the said deeds from the said J. P. Hughey, clerk of the Circuit Court, to Henry S. Sanford, and from said L. P. Hughey and wife and the said Lassiter and wife, above mentioned, and the said certificates of sales of portions of said lands to the State of Florida and the transfer of same to said Sanford hereinabove fully set forth, and that in addition thereto the said Sanford claimed title under the said deeds from said George C. Powell and George W. Powell, and that said defendant and said other parties named in said paragraph claim titles under deeds and conveyances as hereinbefore set forth and as mentioned in said bill of complaint.

And this defendant further answering said paragraph denies the possession of said lands ever was in the United States or the State of Florida, and states that the possession of the defendant and those under whom it claims have been adverse to complainants and those under whom they claim and all other persons and corporations, and this defendant denies each and every one of the allegations of said paragraph thirty-seven in reference to the possession of said property and the character thereof.

24. This defendant further answering each and every allegation of the bill of complaint and particularly para-
66 graph thirty-eight of said bill of complaint, states that there is some growth of pine and cypress timber upon the said property and that the defendant has the title and ownership of said property and of said timber and the exclusive

possession of same, and that it and those under whom it claims have had such ownership and exclusive and adverse possession of same for a great many years as hereinabove set forth. And this defendant denies that the said deed to this defendant and the said several deeds and conveyances mentioned in the bill of complaint under which it claims, or either or any of them, are null and void, as alleged in said bill, but states that said defendant and those under whom it claims had and has the title and possession and right of possession of said property as against the complainants and those under whom they claim, not only under the said deeds, but by the actual adverse possession of the said property since the year 1872, as hereinbefore mentioned, and that the said deeds passed the title to the said property, and that complainants and those under whom they claim are barred by the statutes of limitation of the State of Florida and by their laches and delay of any claim of right, title and possession to the said property as hereinabove set forth.

25. This defendant further answering says that it admits that it is engaged in the business of cutting timber and sawing the same into lumber, shingles, &c., and admits that it has cut and taken timber from said lands and will cut and take timber from said lands under their said titles and right of possession thereof hereinbefore stated.

67 This defendant further answering, states that the said trees and timber standing upon the said lands constitute a part of the value of the said property and that a large part of the said lands are also valuable for cultivation and agricultural purposes and that the said parties under whom this defendant claims have, for a long period of years, cultivated portions of the said property, and that it is untrue that the taking or cutting of the said timber from the said lands would amount to practically destroying them or to render them unfit for use and enjoyment of which they are naturally capable, or prevent the complainants from obtaining their value or enjoying the just and proper use and privileges of said land or would amount to a destruction of the estate as alleged in said paragraph thirty-eight, and this defendant denies that the said complainants, or either of them, have any right, title or interest in and to the said property or the trees and timber growing thereon or any right to cut or use the said timber growing upon the said lands.

This defendant further answering says, that it is entirely solvent and financially able to respond to any damages and to any judgment or claim that the complainants, or any of them, might have or obtain against the defendant for any timber or other products taken from the said land or for any use of the same by this defendant, and that the said complainants are not entitled to any injunction as prayed in said bill.

26. And this defendant further answering denies that the complainants, or any of them, had any title or right of possession in or to the said lands mentioned and described in the said bill or any right to the relief prayed in the said bill against this defendant.

68 27. This defendant further answering the said bill states that the said complainants and each of them have failed and neglected to bring such suit to cancel said tax deeds from the said John Simpson as sheriff and ex officio tax collector to the said John Starke and the said tax deed from the said Robert C. Partin to the said William Mills, and said tax deeds and claims of Henry S. Sanford above mentioned for more than one year, respectively, after the recording of the said deeds, and the said complainants are thereby barred and precluded from maintaining said bill in this cause, and this defendant claims the same benefit thereof as if it had pleaded the same to the said bill.

28. This defendant further answering said bill states that the defendant, and those under whom it claims, entered into possession of said premises under claim of title, exclusive of any other right founded on such claim, on the written instruments as hereinbefore set forth, and that the defendant and those under whom it claims have had a continued occupation and possession of said premises included in the said written instruments, to-wit, the said lands mentioned and described in the said bill, and have held the same adversely for seven years and more prior to the filing of the bill herein, and that under the laws of the State of Florida the complainants are barred thereby of their right to bring or maintain the said bill of complaint herein, and the defendant claims the same benefit and advantage thereof as if it had pleaded the said matters to the said bill herein.

29. This defendant further answering said bill of complaint states that the said bill of complaint seeks to have set aside and cancelled the said deed from the said John Simpson as sheriff and ex officio tax collector of Orange County to John Starke, dated the 5th of July, 1852, and the said deed from Robert C. Partin, tax collector for Orange County,
69 Florida, to William Mills, executed the 23d of April, 1872, and the said deed from the said William Mills to the said George C. Powell, executed the 3d day of May, 1872, and the said deed from the said George C. Powell to Henry S. Sanford, executed the 27th of October, 1881, and the said deed from the said George W. Powell, dated the 15th of November, 1881, and the said deed from the said Henry S. Sanford to Edwin Dawes, George T. Thompson and Anthony Norris, trustees of the Florida Land & Colonization Company, Ltd., executed the 9th day of June, A. D. 1884, and that the said deeds, each and every of them, were executed more than twenty years before the filing of the bill herein, and that under the laws of the State of Florida the said complainants are thereby barred from bringing and maintaining the said bill of complaint herein, and the defendant herein claims the same benefit and advantage thereof as though it had pleaded said matter to said bill of complaint.

30. This defendant further answering says that the alleged right of action of complainants, as stated and set forth in the said bill, to have the decree of this court cancelling each and every of the said deeds prayed to be cancelled in the said bill, accrued more than seven years before the filing of the said bill herein and that neither the said complainants or any of them were seized or possessed of the premises in question within seven years before the accruing of the alleged right of action of said complainants mentioned and described in the bill of complaint, and defendant claims the same benefit and advantage thereof as though it had pleaded the same to the said bill herein.

31. This defendant further answering said bill of complaint says that the complainants are barred in this Honorable Court sitting as a court of equity, by their laches and delay
70 in bringing and filing the said bill of complaint, and this defendant claims the same benefit and advan-

tage thereof as though it had pleaded the same to the said bill of complaint.

This defendant further answering states as follows:

32. That said bill does not set forth such a cause of action as entitled the complainants to the relief prayed or any relief whatever against this defendant, and this defendant prays the same advantage thereof as though it had demurred to said bill on said ground. And said bill does not allege with sufficient certainty the pedigree and relationship of complainants, and defendant prays the same advantage thereof as if it had demurred to said bill.

33. That the bill shows upon its face that the time prescribed by the laws of the State of Florida within which the complainants are entitled to institute said suit to set aside such deeds and each of them has long since expired, and said complainants are barred from filing and maintaining the said bill, and defendant claims the same advantage of same as though it had demurred to the said bill on account thereof.

34. That said bill shows upon its face that the complainants have been guilty of such laches and delay by their failure to institute proper proceedings in the courts to cancel or set aside said deeds, or either of them, within a reasonable time that complainants are not entitled to the relief prayed or any relief whatever against this defendant, and this defendant claims the same advantage thereof as though it had demurred to the said bill on account thereof, that said bill shows that complainants are also estopped by their acquiescence in permitting defendants and those under whom they claim to take possession and remaining in possession and making large expenditures for care and improvements on said property, and defendant prays the same advantage thereof as though it had demurred to said bill.

35. This defendant further answering states that the allegations of the bill of complaint that the deed from John Simpson as sheriff and ex officio tax collector to John
71 Starke has no subscribing witnesses and was never acknowledged or proved for record do not authorize the granting of any relief to complainant under the said bill

in this cause, and this Honorable Court has no jurisdiction to entertain the said bill upon said grounds, and this defendant claims the same advantage thereof as though it had demurred to said bill.

36. This defendant further answering says that the allegations of the said bill that the said deed from Robert C. Partin to William Mills is unauthorized by law and that said deed should have been executed by the county clerk of said county would not authorize any relief to be decreed to the complainants upon the said bill in this suit, and this Honorable Court has no jurisdiction on said ground, sitting as a court of equity, to entertain said bill and this defendant prays the same advantage thereof as though it had demurred to said bill on account thereof.

37. This defendant further states the allegations of the said bill are not sufficient to show that the assessments and sales thereunder of said lands, upon which are based the said deeds from the said John Simpson as sheriff and ex officio tax collector to said John Starke and the said Robert C. Partin to William Mills, or the said deeds themselves, are subject to be cancelled under decree of this Honorable Court, and defendant claims the same benefit thereof as though it had demurred to said bill on account thereof.

38. This defendant further answering states that the deeds from George C. Powell to H. S. Sanford and from George W. Powell to H. S. Sanford, and from said Sanford to said Dawes, Thompson and Norris as trustees &c., and from said Florida Land & Colonization Company to this defendant are warranty deeds and said grantors therein are necessary parties to said bill and are not made parties to said bill, and defendant prays same advantage thereof as if it had demurred to said bill on account thereof.

72 39. And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing in said complainants' bill of complaint contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently

answered, confessed, traversed, avoided or denied, it is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

WILSON CYPRESS COMPANY.
By A. E. WILSON, Vice President.

Attested with seal of the company by the undersigned as secretary of said company and custodian of said seal:
[Corporate Seal] F. H. WILSON, Secretary.

COOPER & COOPER,
E. E. HASKELL,
Counsel and Solicitors for Defendant.

73 State of Florida,
County of Putnam.

Personally appeared before me this day A. E. Wilson and F. H. Wilson, who being sworn, depose and say that they are the vice president and secretary respectively of the Wilson Cypress Company, a corporation organized and existing under the laws of the State of Florida, and that the said F. H. Wilson as such secretary of the Wilson Cypress Company, is the custodian of the corporate seal of the said company and authorized to affix the same to the said answer and that the seal affixed to the said answer is the seal of the said corporation; that they have read the foregoing answer and know the contents thereof, and that the same is true to their own knowledge, except as to matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

A. E. WILSON.
F. H. WILSON.

Sworn to and subscribed before me this 1st day of July, 1907.

R. P. DANIEL, JR.
[Notarial Seal] Notary Public, State of Florida.
My commission expires Oct. 16, 1907.

74 I, J. C. Cooper, one of defendant's solicitors,

hereby certify that in my opinion the foregoing demurrers and pleas are well founded in point of law.

J. C. COOPER.

State of Florida,
County of Duval, ss.

Personally appeared before me A. E. Wilson, who being duly sworn says that he is vice president of said Wilson Cypress Company, defendant in the above entitled cause; that said aforestated demurrers are not interposed for delay, and said aforestated pleas are true in fact.

A. E. WILSON.

Sworn to and subscribed before me this 1st day of July, 1907.

R. P. DANIEL, JR.,
[Notarial Seal] Notary Public, State of Florida at Large.

Indorsed: In the U. S. Circuit Court, Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al. vs. Wilson Cypress Company. Answer of defendant. Filed July 1, 1907. E. O. Locke, clerk. L. L. Haskell and Cooper & Cooper, attorneys at law, Jacksonville, Florida, solicitors for defendants.

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75 In the Circuit Court of the United States for the Southern District of Florida.

Enrique del Pozo y Marcos, Ladislao de Pozo y Marcos et al.
Complainants,
vs.
The Wilson Cypress Company, Defendants.

The replication of Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Christina del Pozo y Marcos by her husband Alejandro Nunez Villaiconcio y Alvarez, her next friend, Maria Piler Marcos y Pozo by her husband Ysidro Martinez y Sanchez, her next friend, Felix Genaro Marcos y Diaz, Adelida Garcia y Pechando, widow of Urbano Codina, Estabam Garcia y Pechardo, Rafaela Garcia y Pechar-

do, by Maximo Zertucha, her husband and next friend Loranzo Garcia y Pechardo, Carmen Garcia y Pechardo by Ysidro Zertucha, her husband and next friend, Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvasses, otherwise called Alvarez, Alfonso Garcia y Pechardo, Ricardo Garcia Alvasses; Margarita Alvasses de Garcia, widow, Richardo Alvasses Garcia Alfonso Alvasses Garcia, Miguel Alvasses Garcia, Luis Alvasses Garcia; Maria Teresa Garc ia y Ochandrena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena; Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez; Amelia Pozo y Nunez by Saladriguez, her husband and next friend, Alfredo Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Farbe, Concepcion Pozo y Fabre by Reyes, here husband and next friend, complainants in the above cause to the answer of the Wilson Cypress Company, defendant.

These repliants saving and reserving all advantage of exception to the manifold insufficiencies of said answer, for replication thereto say that they will aver and prove their said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore they pray relief as in said bill set forth.

W. W. DEWHURST,
JONES & JONES,
Complainant's Solicitors.

76 Indorsed: 21 R 23. In the Circuit Court of the United States for the Southern District of Florida. In Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Replication. Filed July 30, 1907.

E. O. LOCKE, Clerk.

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77 In the Circuit Court of the United States, Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, a corporation, Defendant.

To the Honorable James W. Locke, Judge:

No testimony in said cause having been taken on either side, the complainants in the above entitled suit by W. W. Dew-

hurst and Jones & Jones, their solicitors, move the Court that they be allowed to withdraw the replication by them filed to the answer of the defendant and amend the said bill of complaint in the following particulars:

In paragraph 18, subdivision 2, strike out the allegation that an annual assessment was attempted to be levied on the lands in controversy and insert in lieu thereof the allegation that no assessment of taxes was made on said lands for the years A. D. 1845 to 1851, inclusive, nor for any of said years.

To paragraph 25 add the allegations as to the several additional tax sales, evidences thereof and assignments of the same which are set out in paragraphs fourteen and fifteen of the answer filed.

In paragraph 31 strike out the allegation that the defendant built a cabin on the lands in controversy.

From the last clause of paragraph 37 strike out the words "and that said Sanford had or claimed no other title to said lands except by and under said alleged deed from said George C. Powell and said Powell had or claimed no title to said lands except by and under said alleged deed from said William Mills."

Add to said bill an allegation that George C. Powell, George W. Powell and H. S. Sanford, persons suggested in paragraph thirty-eight of the answer, as necessary parties, are

78 dead.

W. W. DEWHURST,
JONES & JONES,
Solicitors for Complainants.

Indorsed: 21 R 23. In the Circuit Court of the United States for the Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Motion to be allowed to withdraw replication and amend bill. Filed June 6, 1908.

E. O. LOCKE, Clerk.

79 In the Circuit Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, a corporation, Defendant.

State of Florida,
County of St. Johns.

W. W. Dewhurst, being first duly sworn, on oath says that he is one of the solicitors for complainants; that the proposed amendment of the bill of complaint in the above entitled cause is not made for the purpose of vexation or delay.

And further says that the matter of the proposed amendments sought to be made and set forth in the motion to be presented is material and could not with reasonable diligence have been sooner introduced into the bill.

That affiant drew the bill of complaint upon information furnished by his associate counsel; that affiant and his associates had no reason to suppose that there had been so gross an irregularity in proceeding as the issuance of a tax deed by a public official without the assessment of any tax at all; that in preparing the evidence for a trial of said cause, affiant, being informed that the original tax rolls for Orange County for the years 1845 to 1851 had been burned, went lately to Tallahassee and inspected the duplicate tax rolls filed in the office of the comptroller and discovered that the lands in controversy were not assessed upon the tax roll of said Orange County for any of the years 1845, 1846, 1848, 1849, 1850 or 1851; that this discovery was not made until the month of March last; that the motion pending in this cause to require defendant to elect whether to stand on its demurrer or answer was then pending and was not decided until the 29th day of March; that

80 affiant has been absent from Florida two weeks in April and unable sooner to prepare and present the proposed motion for amendment. Affiant says he is advised and believes his associates did not possess information of the foregoing fact as to the contents of the original tax rolls of Orange County until the same was discovered by affiant and disclosed to them. Affiant further says that the amendments proposed to be inserted are true to the best of his knowledge, information and belief; that the amendment as to the want of any tax

assessment on the lands in controversy prior to the issuance of the alleged tax deed from Simpson to Starke is necessary to be made and that all the matters of amendment set out in the motion to be presented are material and under the rules of practice applicable to the proceedings in this cause, could not with reasonable diligence have been sooner introduced into said bill.

W. W. DEWHURST.

Sworn to and subscribed before me this 5th day of May, A. D. 1908.

ALBERT H. MICKLER,

[Seal] Notary Public State of Florida at Large.

My commission expires December 11th, 1909.

I, J. H. Jones, of Jones & Jones, of counsel for complainants, have read the foregoing affidavit and declare that I believe the same to be true.

J. H. JONES.

Sworn to and subscribed before me this 1st day of May, A. D. 1908.

L. G. STARBUCK,

[Seal] Notary Public State at Large.

My commission expires September 9th, 1909.

Indorsed: 21 R 23. In Circuit Court of the United States, Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Affidavit for amendment of bill of complaint. Filed June 6, 1908.

E. O. LOCKE, Clerk.

81 In the United States Circuit Court, in and for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, Defendant.

All the evidence introduced in this case on behalf of both parties being filed herein, and this cause coming in for final hearing the complainants do hereby note upon the record, that because of the very large expense in making proof of pedigree they have relied upon the frame of their bill by which complainants sue in behalf of themselves and all other in like situation competent to sue in this Court and have proved pedigree and descent from the common ancestors and the grantee named in the patent from the United States to the lands in controversy, to-wit, Teresa Rodriguez, to only eight of the complainants named in the bill, to-wit:

Felix Genaro Marcos y Diaz, son of Miguel Marcos and a grandson of said Teresa; Ernesto Nunez del Pozo, called in the bill Ernesto Pozo y Nunez, a great-grandson of said Teresa, he being son of Christina del Pozo y Marcos, who was a daughter of Dorotea Marcos, who was a daughter of the said Teresa. Of Esteban, Lorenzo and Luis Garcia y Pechardo, great-grandchildren of said Teresa, they being sons of Genaro Garcia y Marcos, who was a son of Maria or Allagracia Marcos, a daughter of said Teresa. Of Richardo, Gertrudes and Maria Teresa Garcia y Ochandarina, great-grandchildren of said Teresa, who are children of Augustin Garcia y Marcos, who was a son of said Maria or Alltagracia Marcos, a daughter of said Teresa.

And complainants on the record do consent that this Court in its decree may order that all the complainants
82 named in the bill may be struck out save only those complainants whose pedigree from the grantee named in the patent from the United States have been proven, whose names are hereinbefore set out, and that a decree may be entered in favor of those complainants hereinbefore named who sue in behalf of themselves and all other descendants and heirs at law of said Teresa Rodriguez and who have in this suit proved such descent and heirship, said decree to be for the use and benefit of all said complainants who may be living at the

date of said decree and their legal representatives, and the legal representatives of any of said complainants who are dead.

And complainants also file this their consent and tender, as follows: That if the Court be of opinion that the defendant under the facts proved as to its knowledge that complainants held the legal title to the lands patented when it took its deed to the lands in controversy is entitled to be reimbursed by complainants the sums named by said defendant as paid for taxes on said lands since May 3, A. D. 1900, and that complainants are equitably required to pay said taxes to entitle them to a decree that this Court may in its decree make the repayment of such sum with lawful interest from date of payment of said annual taxes a prerequisite to the taking effect of the decree of this Court cancelling the defendant's deed to complainants' said land and quieting the title in complainants to said lands as in said bill prayed.

JONES & JONES,
W. W. DEWHURST,
Solicitors for Complainants.

Indorsed: In United States Circuit Court, Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Consent to dismiss as to certain of complainants. Filed June 8, 1911.

E. O. LOCKE, Clerk.

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83 In the Circuit Court of the United States, Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, a corporation, Defendant.

The complainants having moved for leave to withdraw their replication to the defendant's answer filed in this cause, before any testimony taken therein, having accompanied such motion with proof by affidavit that their motion is not made for the purpose of vexation or delay, and that the subject matter of the amendments is material and true, the Court, after argument of counsel and consideration of said motion and proof,

being satisfied that the matter of the proposed amendments as set out in the first four paragraphs of said motion is material, and that the same is not made for the purpose of delay or vexation, the complainants having submitted to the Court a draft of their proposed amendments, it is ordered that complainants be permitted to withdraw their replication and to amend their bill in the particulars stated in the first four paragraphs of their motion filed herein, upon furnishing the defendant a copy of such amendments, the said amendments being noted in the original bill, and filing herein a waiver of any further answer by said defendant and be agreement that the answer filed by said defendant may stand as the answer of said defendant to the bill of complaint as amended, such waiver and agreement not to prejudice the right of said defendant to file a new or further answer if it so desires; that as to the motion for leave to amend the bill to allege the death of certain parties, the same is denied, the amendment in the form proposed being deemed immaterial.

Done and ordered at Jacksonville, this fifteenth day of June, A. D. 1908.

JAMES W. LOCKE, Judge.

84 Indorsed: 21 R 23. In the Circuit Court of the United States for the Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Order allowing certain amendments to the bill. Filed June 15, 1908.

E. O. LOCKE, Clerk.

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85 In the Circuit Court of the United States for the Southern District of Florida.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, a corporation, Defendant.

The complainants in the above entitled cause, by leave of the Court first had now amended their original bill of complaint as follows:

Change the language of sub-section two (2) of paragraph

eighteen (18) of said bill so that the same shall read as follows:

"That the alleged sale and attempted conveyance was upon a distress for alleged unpaid taxes, for each of said years in excess of what could have been lawfully levied upon the lands to which the ancestors of your orators had an equitable or inchoate right, in that by the tax law of the State of Florida, then in force, a tax of one-quarter of a cent to three-quarters of a cent, depending upon the class of land, upon each and every acre of land held in private ownership was directed to be assessed and collected for each and every year. That no assessment for taxes for the years A. D. 1845, 1846, 1847, 1848, 1849, 1850 and 1851 or for any of said years, was made of the lands in said sheriff's deed attempted to be conveyed and therein described, but without the assessment required by law, or any assessment of a tax for each of said years or any of said years upon the said lands, and as your orators on information and belief allege, without any sale whatever, there was a paper writing in the form of a sheriff's deed, but without attesting witnesses, executed in favor of one John Starke, by one John Simpson, sheriff and tax collector of said county, dated July 15, 1852, which has been copied into the public records of Orange County, and reciting that the same was made because of default of payment of taxes due for said years 1845 to 1851 inclusive, on a tract of five thousand, four hundred and eighty (5,480) acres of lands supposed to belong to Teresa Rodriguez, while not more than four thousand, four hundred and thirty-eight and 60-100 acres out of
86 said tract of land was or could be subject to taxation as the property of said Teresa Rodriguez or of the ancestors of your orators, under the law as construed and held and announced by the executive and judicial branches of the Government of the United States, even if there had been any assessment thereof."

Change the language of paragraph twenty-five so that it shall read:

That while your orators and their ancestors were excluded from the possession of their said lands by the United States, said Powell, by deed in writing, attempted to convey certain

parts of said Section Nine (9), Township Nineteen (19), Range Twenty-eight (28), but as your orators are informed and believe there are now no persons claiming adversely to your orators under said deeds save only the defendant.

That on to-wit, the 25th day of January, A. D. 1882, one J. E. Hughey, clerk of the Circuit Court of Orange County, executed a tax deed to one Henry S. Sanford, of your orator's said lands or the greater portion thereof, and said deed was on said date recorded in Book One (1) of the Records of Tax Sale Deeds, pages 126 to 128 of the public records of said Orange County; that on to-wit the 5th day of May, A. D. 1879, the tax collector of Orange County made sale of your orator's land, lands or the greater portion thereof to the State of Florida, for the non-payment of taxes thereon for the year A. D. 1878, and issued to said State of Florida a tax sale certificate therefor, which said tax sale certificate was thereafter assigned by the State of Florida to one James E. Ingraham, who thereafter, on to-wit, June 22nd, 1882, assigned the same to said Henry S. Sanford; that on to-wit said 5th day of May, A. D. 1879, for the non-payment of taxes for the year 1878 the tax collector of Orange County sold to the State of Florida a portion of your orator's said land described as the southwest quarter of the southeast quarter of Section Thirty-four (34), Township Twenty (20), south of Range Thirty-one (31) east, and issued a tax sale certificate therefor to said State of Florida, which was thereafter assigned by said State of Florida to one James E. Ingraham, who thereafter and prior to January, A. D. 1884, assigned the same to Henry S. Sanford.

87 That on said 5th day of May, A. D. 1879, the tax collector of Orange County sold to the State of Florida for the non-payment of taxes for the year 1878 a portion of your orator's said lands described as the east half of Section Nine (9) of Township Nineteen (19) south of Range Twenty-eight (28) east and issued a tax sale certificate therefor to said state, which was thereafter assigned to one Thomas E. Wilson, and thereafter, on to-wit May 15th, 1882, assigned by said Wilson to said Henry S. Sanford.

That said Henry S. Sanford also obtained a deed of conveyance dated July 26, 1882, of a portion of your orator's said lands from one A. S. Lassiter and wife, which was recorded February 2, 1884, in Deed Book 3, page 177, of the public records of Orange County, and also a deed of conveyance dated

October 15th, 1883, of some portion of your orator's lands from L. P. Hughey and wife, recorded February 2, 1884, in Deed Book "Y," page 964, of the public records of Orange County.

That all of said deeds and tax sale certificates are based on tax sales made of your orator's said lands while the United States claimed title and ownership thereof and was in possession thereof and while your orators and their ancestors and predecessors in title were excluded therefrom by the United States, claiming to be the owner and their right thereto denied by the United States claiming the same as public lands, and all of said tax sales and all deeds and conveyances based thereon were and by reason aforesaid are utterly void and conveyed no right, title nor interest in your orator's said lands to said Henry S. Sanford.

That on to-wit the 9th day of July, A. D. 1887, the clerk of the Circuit Court for Lake County issued a tax deed to one M. C. Crumpeller, for the west half of the northeast quarter of the southwest quarter of Section Sixteen (16), Township Nineteen (19), south of Range Twenty-eight (28) east, recorded in Deed Book 68, page 165, of the public records of Lake County, Florida, and on to-wit April 24th, 1883, the clerk of said Circuit Court of Lake County issued a tax deed to one
88 J. C. Kryce, for the northwest quarter of Section Twenty-one (21), Township Nineteen (19), south of Range Twenty-eight (28), which has been recorded in Tax Sale Book No. 1, page 60, of the public records of Lake County.

And on to-wit August 4th, 1891, the clerk of said Circuit Court for Lake County issued a tax deed to Buffum Land and Trust Company of the east half and the southwest quarter of the southwest quarter of Section Four (4), of Township Nineteen (19), south of Range Twenty-eight (28) east, which has been recorded in Tax Sale Book No. 1, page 380, of the public records of Lake County, Florida.

That each and all of said tax deeds are absolutely void and convey no right, title nor interest in the lands therein described, for the reason that the lands therein described were not subject to taxes prior to February 12, A. D. 1894, and all of said tax deeds are based on alleged assessments of taxes made on your orator's lands while the same were by the United States claimed to be public lands and were held and possessed by the United States and while the United States refused to

recognize the private claim thereto of the legal representatives of Teresa Rodriguez or Miguel Marcos or were based upon taxes alleged to be due on said lands without any assessment thereof for taxes having been made.

Change the language of paragraph thirty-one so that it shall read:

Thirty-first: That the defendant from some time after the date of said alleged deed has employed an agent to watch said property and keep the timber which covers said land from being stolen, but your orators say that said lands are wild, unimproved and unoccupied and that the defendant is not in actual possession thereof, and has never had such a possession thereof as in law would bar a right of entry by your orators, though your orators aver that it is the hope and expectation of said defendant to so hold and use its claim of title and
89 said deed from said Colonization Company to bar recovery by your orators and defeat and destroy your orators' title by lapse of time. And your orators aver that they are and have been since the issuance of the patent from the United States on to-wit the 26th day of June, A. D. 1895, in the possession of said lands, the subject matter of this suit.

Change the language of the last clause of paragraph thirty-seven so that it shall read:

And your orators say that the defendant, the Wilson Cypress Company, has no other claim or title to the said lands except by and under the alleged deeds from the Florida Land and Colonization Company; that the said Florida Land and Colonization Company had or claimed no other title to said lands except by and under the said alleged deed from said Dawes and Thomson, trustees, and said Dawes and Thomson, trustees, had or claimed no other title to said lands except under and by the said alleged deed from Henry S. Sanford, and that all the several claims of title and right are based upon none other than the said tax deed from said Robert C. Partin, hereinbefore set out, and that as to all of said persons and claimants there has at no time been an adverse possession of said lands as against your orators and those under whom they

derive title, and as to all of said claimants except the Florida Land and Colonization Company, and the defendant, the Wilson Cypress Company, there could not have been any adverse possession of said lands because the possession thereof was in the United States and the State of Florida, each holding specific parts thereof from A. D. 1850, and as to those sovereign states, your orators aver that neither the Florida Land and Colonization Company nor the defendant, the Wilson Cypress Company, ever claimed to hold said lands adversely to the United States or the State of Florida.

JONES & JONES,
W. W. DEWHURST,
Solicitors for Complainant and Counsel.

Indorsed: 21 R 23. In Circuit Court of United States, Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Company. Amendment of certain paragraphs in bill of complaint. Filed June 15, 1908.
E. O. LOCKE, Clerk.

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90 In the Circuit Court of the United States, in and for the Southern District of Florida.

Enrique del Pozo y Marcos et al.
vs.
Wilson Cypress Company, a corporation.

Upon application of the defendant herein, it is ordered that said defendant have until the rule day of August, 1908, to plead herein as advised.

Jacksonville, Fla., June 29th, 1908.
JAMES W. LOCKE, Judge.

Indorsed: 21 R 23. U. S. Circuit Court, Southern District of Florida. E. del Pozo y Marcos vs. Wilson Cypress Co. Order allowing till August rule day to answer amended bill. Ent Minute P—"Pg 115 C.O.B. D." Filed June 20, 1908.
E. O. LOCKE, Clerk.

91 THE ANSWER OF THE DEFENDANT, WILSON CYPRESS COMPANY, A CORPORATION, TO THE AMENDED BILL OF COMPLAINT IN SAID CAUSE.

In the United States Circuit Court, for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, a corporation, Defendant.

This defendant now, and at all times hereafter, saving to itself all and all manner of benefit or advantage of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in said bill of complaint contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

That it hereby repeats and reaffirms in answer to the said amended bill, each and every statement and allegation of its answer heretofore filed in this cause to the original bill of complaint herein.

And this defendant further answering sub-section two (2) of paragraph eighteen (18) of said bill as amended, says that the said several allegations contained in said portion of said amended bill, are untrue.

92 The defendant further answering said sub-section two (2) of paragraph eighteen (18) of said bill as amended, says that it is informed and believes, and on such information and belief alleges that the said assessments for taxes upon said lands for the several years mentioned in said portion of said bill, were made as required by law, and the said sale of said lands for the non-payment of said taxes for said years, was also made as required by law, and on which was based the said deed from the said John Simpson, as sheriff and tax collector, to said John Starke, mentioned in said portion of said amended bill.

This defendant further answering said portion of said bill as amended, and above referred to, says that it is not informed as to whether or not the evidence is now in existence of said assessments of said lands and of said sales thereof for the non-

payment of the taxes mentioned in said portion of said amended bill, but alleges that such evidence once existed, and this defendant is advised and so charges that in the event that said evidence could not now be found or obtained, that after this long lapse of time since the said years mentioned in said portion of amended bill, and since the date of the said deed from John Simpson as sheriff and tax collector, to said John Starke; that the fact that said assessments and sale were duly and regularly made, will now be conclusively presumed by this Honorable Court in this cause.

This defendant further answering said portion of said bill as amended and above referred to, says that the complainants are barred by lapse of time and their laches from maintaining their said bill on account of either or any of the said matters and things alleged in said portion of said amended bill or from now asserting or insisting upon the said matters or any of them.

93 This defendant further answering said portion of said bill as amended and above referred to, says that the complainants are severally barred by the statutes of limitation of the State of Florida in such cases provided, from maintaining their said bill on account of any of said matters alleged in said portion of said bill or from now asserting or insisting upon same.

Defendant further answering said portion of said bill as amended, above referred to, says that the entire grant of said lands from the Government of Spain mentioned and described in said original and amended bill of complaint, and in the answer of this defendant heretofore filed herein, was subject to taxation by the State of Florida and under its authority during the said years stated and mentioned in said portion of said amended bill above referred to, and that said grant of said land was for the amount of five thousand, five hundred (5,500) acres, and that it is advised and so alleges that the said assessment and sale of said lands as mentioned and described in said deed from John Simpson as sheriff and tax collector to said John Starke, covered and included all of the said grant and the entire acreage thereof and contained therein, and that the said deed conveyed the title thereto to the said Starke.

The defendant further answering said portion of said bill as amended, above referred to, avers that it is advised and so

charges as a matter of law that if the said matters stated in the said portions of said bill as amended are true, that this Honorable Court, sitting as a court of equity, has no jurisdiction to entertain complainants' said bill of complaint as amended, praying a decree cancelling the said deed and record thereof, but that the said deed would be absolutely void
94 and of no effect, and this Honorable Court sitting as a court of equity would have no jurisdiction to decree the cancellation of said deed or the said record, and this defendant prays the same advantage of said objection to said bill, as if it had demurred to said bill of complaint upon the said ground.

2. This defendant further answering paragraph twenty-five (25) of the said bill of complaint as amended, says that it is untrue in law or in fact that complainants or their ancestors were ever excluded from the said lands described in said bill by the United States as alleged in said bill, and that it is true that the said Powell mentioned in said paragraph, by deed in writing, conveyed certain parts of said Section Nine (9) of Township Nineteen (19) Range Twenty-eight (28) east to other persons, and this defendant is not informed as to whether or not such other persons are now claiming adversely to complainants under said deed, or whether or not there are now any persons other than this defendant claiming adversely to complainants under said deed or deeds from said Powell, as alleged in said bill, but demands proof thereof, and that the said complainants should be required to state and set forth in said bill of complaint, the name or names of such persons, and to make them parties defendant to said bill, and this defendant claims the same advantage thereof as though it had demurred to said bill on said grounds, and here repeats all the allegations stated in its answer to the original bill herein in reference to the defendant's adverse possession of said lands, and every part thereof mentioned and described in the bill of complaint.

This defendant further answering said paragraph twenty-five (25) as amended, says that the several sales certificates, assignments, transfers and deeds mentioned in said
95 paragraph, as having been made or executed to said Henry S. Sanford or finally vested in him, were severally made and executed as stated in said paragraph, and were in all respects regular, valid and legal.

And that it is untrue as alleged in said paragraph that all or any of said deeds and tax sale certificates are based on tax sales made of the lands described in said deeds and certificates while the United States claimed title and ownership of same or was in possession thereof, or while the complainants or their ancestors or predecessors were excluded therefrom by the United States, and this defendant says that it is untrue that the United States at the time of the said sales and certificates had or claimed any title or ownership of, or was in possession of said lands or any part thereof, or denied the right of complainants thereto, or claimed the said lands as public land as alleged in said paragraph of said bill.

This defendant further answering said paragraph says that it is advised that even if the United States had claimed such title, ownership or possession, that such claim did not effect the taxable character of said lands, and that the same was subject to taxation at the several dates of said several tax sales, and that said tax sales, deeds and conveyances and each of them mentioned in said paragraph are in all respects valid and legal, and did convey any and all right, title and interest of all persons having any title in the said land to the said Henry S. Sanford.

This defendant further answering said paragraph twenty-five (25) as amended, alleges that the said complainants are barred by their long delay and laches and by the statute of limitation of the State of Florida, of their right to
96 bring or maintain their said bill of complaint on account of any of the said matters alleged in said paragraph twenty-five (25) as amended, and the defendant claims same benefit of advantage thereof, as if it had demurred to the said bill herein on said grounds.

This defendant further answering said paragraph twenty-five (25) as amended, alleges that the said complainants are barred by their long delay and laches and by the statute of limitation of the State of Florida, of their right to bring or maintain their said bill of complaint on account of any of the said matters alleged in said paragraph twenty-five (25) as amended, and the defendant claims the same benefit of advantage thereof, as if it had pleaded said matters to the said bill herein.

This defendant further answering the amended bill of complaint, states that it is informed and believes, and on such in-

formation and belief, alleges that the said Henry S. Sanford, mentioned in said bill and amended bill, died prior to the filing of the said original bill herein, but that he left surviving him, heirs and legal representatives, who are still living, and were at the time of the filing of said bill and amended bill herein, and that this defendant is advised and so charges that the said heirs and legal representatives of the said Henry S. Sanford, are necessary parties defendant to the said bill and amended bill herein, and this defendant claims the same advantage of said objection to said bill as though it had demurred thereto on said grounds.

And this defendant further answering said amended bill of complaint, says that it has no information as to whether the said George C. Powell and George W. Powell and the said Edwin Dawes, George T. Thompson and Anthony Nor-
97 ris or either of them were living or dead at the time the original bill of complaint was filed in this case, but it is advised and so charges that it was and is incumbent upon the complainants herein to ascertain whether the said persons or either or all of them, were living or dead at the time of the filing of the bill of complaint herein, and if living, the complainants should be required to make said parties or such of them as were living at the time, defendants to the said bill of complaint, or if dead, to make their heirs and legal representatives defendants to the said bill of complaint, and this defendant prays the same advantage of said objection to said bill and amended bill as though it had demurred to same on said grounds.

And this defendant further answering the twenty-fifth (25th) paragraph of said bill as amended, says that it is true as alleged in said paragraph, that the said tax deeds were issued to the said M. O. Crumpeller and the J. C. Kryce and the said Buffum Land & Trust Company, as therein alleged. And that it is untrue that the said lands were not subject to taxation as alleged in said paragraph twenty-five (25) as amended, or that said lands were claimed or held or possessed by the United States as alleged in said paragraph, or that the taxes were not assessed on said lands during the said years for the non-payment, for which sales were made on which the said tax deeds to the said Crumpeler, Kryce and Buffum Land & Trust Co. severally are based. And this defendant further alleges that the said complainants should be required to make the said M.

O. Crumpeller, J. C. Kryce and Buffum Land & Trust Company, defendants to the said bill of complaint and that the said Crumpeller, Kryce and said Buffum Land & Trust Company are necessary defendants to the said bill of complaint, and this defendant claims the same advantage of said objec-
98 tion to said bill, as though defendant had demurred to the same on that ground, and the same advantage as if it had pleaded said facts to the said bill of complaint.

3. This defendant further answering paragraph thirty-one (31) to the bill of complaint as amended, repeats thereto each and every of the statements and allegations of defendant's answer to the original paragraph thirty-one (31) of the said original bill, and states that it is untrue that the said lands are wild and unimproved and unoccupied, or the defendant is not in actual possession of, but avers that the defendant is in actual occupation of said land, and has been since the date of deed to the defendant mentioned in bill of complaint, and that said defendant, and those under whom defendant claims title have been in actual, open, notorious and exclusive occupation of said lands ever since the year eighteen hundred and seventy-two (1872).

This defendant repeats each and every of the allegations of its answer heretofore filed herein in reference to the possession of said lands by defendant and those under whom it claims title, and in reference to the bar of the statute of limitation of the State of Florida by reason of the said adverse possession of defendant and those under whom it claims title in and to the said lands.

This defendant further answering said paragraph thirty-one (31) as amended, says that it is untrue that the complainants or either of them, since the 26th day of June, 1895, or at any other time, have been in possession of said lands, the subject matter of this suit, or any part thereof.

4. And this defendant further answering paragraph thirty-seven (37) of the bill of complaint as amended, says
99 that it is untrue that the defendant has no other claim of title to said lands that said title based upon said tax deed from Robert C. Partin, and that it is untrue that the said Henry S. Sanford had no other claim or title than was based upon the said tax deed from said Robert C. Partin,

and that it is untrue that the said several persons under whom the defendant claims title, mentioned in said paragraph thirty-seven (37) as amended, had or claimed no other title or right to said lands except under said tax deed from Robert C. Partin, or that their several claims of title and right are based upon none other than the said tax deed from said Robert C. Partin, but that the facts are that the said Henry S. Sanford and those claiming title to said land under him in addition to the said claim of title under the said tax deed from said Robert C. Partin, claim title to the said property under and by virtue of each and every of the sales certificates, assignments and deeds to the said Henry S. Sanford, mentioned in the said twenty-fifth (25th) paragraph of said bill of complaint as amended, and also in the thirteenth (13th) and fourteenth (14th) paragraphs of this defendant's answer to the original bill of complainant, and that it is untrue as alleged in said paragraph thirty-seven (37) as amended, in bill of complaint, that there has at no time been an adverse possession of said lands as against the complainants and those under whom they derived title, but states the facts to be that the defendant and those under whom it claims title to said property, has been in actual, open, notorious and adverse possession of said lands as against complainants and those under whom they claim title since the year 1872, and the complainants and those under whom they claim title are barred of their right to maintain the said bill of complaint by reason of said adverse possession of the said defend-
100 ant and those under whom it claims title to said lands. This defendant further answering the said bill as amended, repeats each and every of the matters reserved in its answer heretofore filed herein, as though the same had been raised by demurrer, and repeats each of the matters stated in said answer, of which the defendant therein claims the same benefit and advantage as if it had pleaded such matters.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged, without this, that there is any other matter, cause or thing in said complainants' bill of complaint contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, avoided, denied, is true to the knowledge or belief of this said defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove, as

this Honorable Court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

WILSON CYPRESS CO.
By A. E. WILSON, Vice President.

Attested with seal of the company by the undersigned as secretary of said company and custodian of said seal.

[Seal] F. H. WILSON, Secretary.

E. E. HASKELL,
COOPER & COOPER,
Solicitors for Defendant.

101 State of Florida,
County of Putnam.

Personally appeared before me this day A. E. Wilson and F. H. Wilson, who being sworn, depose and say that they are the vice president and secretary respectively of the Wilson Cypress Company, a corporation organized and existing under the laws of the State of Florida, and that the said F. H. Wilson as such secretary of the Wilson Cypress Company, is the custodian of the corporate seal of said company and authorized to affix the same to the said answer and that the seal affixed to the said answer is the seal of the said corporation; that they have read the foregoing answer and know the contents thereof. and that the same is true of their own knowledge, except as to matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

A. E. WILSON.
F. H. WILSON.

Sworn to and subscribed before me this 24th day of July, 1908.

H. F. LECKS,
[Seal] Notary Public State of Florida.
My commission expires Jan. 20, 1910.

Indorsed: 21 R. 23. In the United States Circuit Court for Southern District of Florida, in Chancery. Enrique del Pozo y Marcos, et al, Complainants, vs. Wilson Cypress Company, a corporation, Defendant. The answer of defendant to amended bill of complaint in said cause. Filed Aug. 3, 1908.
E. O. LOCKE, Clerk.

102 In the Circuit Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al. Complainants,
vs.
Wilson Cypress Company, Defendant.

The complainants having filed herein on the 17th day of August, A. D. 1908, their direction to the clerk setting said cause down for argument upon the objections made in the answer filed to the amended bill herein, that said amended bill is defective for want of parties, do now withdraw their said request to set said amended bill and answer down for argument upon said objection and for replication to said answer to said amended bill these repliants, saving and reserving unto themselves all and all manner of advantage of exception to the errors, uncertainties and insufficiencies of the said answer, say they will aver, maintain and prove their said amended bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant, the Wilson Cypress Company, is uncertain, untrue and insufficient in law to be replied unto by these repliants.

Without this, that any other matter or thing in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, avoided, traversed or denied is true. All which matters and things these repliants are and will be ready to aver, maintain and prove as this Honorable Court shall direct, and they humbly pray as in and by their said bill they have already prayed.

JONES & JONES,
W. W. DEWHURST,
Complainants' Solicitors.

103 Indorsed: 21 R 23. In Circuit Court of the United States, Southern District of Florida, in Chancery. Enrique del Pozo y Marcos et al vs. Wilson Cypress Co. Withdrawal of request to set down bill of objections for want of parties and replication to the amended bill. Filed Sept. 7, 1908.

E. O. LOCKE, Clerk.

104 In the District Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al
vs.
Wilson Cypress Company.

The complainants and their solicitors will please take notice that on Thursday, the 4th of January, 1912, at 9:30 o'clock A. M., or as soon thereafter as counsel can be heard, we will present the motion to the Court in the above entitled cause for an order requiring complainants to execute and file in said cause a bond to secure the payment of costs by the complainants in the event the defendant shall finally secure a decree in its favor in said cause, a copy of which motion is herewith served upon you.

COOPER & COOPER,
Solicitors for Defendant.

Indorsed: No. 21 P. 1 R. 23. In U. S. District Court, Southern District of Florida, in Chancery. E. Marcos et al. vs. Wilson Cypress Company. Notice of motion for order requiring complainants to give bond. Filed January 9, 1912.
C. E. JOHNSON, Deputy Clerk.

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105 In the District Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos et al
vs.
Wilson Cypress Company.

Now comes the defendant in the above entitled cause and moves the court to require the complainants to execute and file in this cause a bond, with good and sufficient sureties, in such sum as the Court may fix, conditioned to pay the costs in said cause in the event that the final decree herein, after appeal to the United States Circuit Court of Appeals, shall be entered in favor of defendant, on the following grounds, to-wit:

1. That the complainants, as shown by the record, are not residents of the Southern District of Florida or of the State of Florida but are residents of the Republic of Cuba.

2. That the defendant intends taking an appeal from the final decree about to be entered in this cause to the United States Circuit Court of Appeals, and in the event of the reversal of said final decree defendant will be entitled to recover from complainants all costs expended in said cause.

3. That the complainants have no property in the Southern District of Florida or in the State of Florida, so far as is known to defendant or its counsel, upon which execution could be levied to satisfy any judgment or decree that defendant may hereafter obtain against complainants for its costs in this cause.

106 4. That the defendant could not and did not anticipate the extent of the litigation or the character of same or the amount of testimony to be taken therein when the suit was commenced or prior to the taking of the testimony, and did not anticipate a decree against defendant herein or that an appeal therefrom by defendant would be necessary, and, therefore, did not earlier make this application to the Court.

COOPER & COOPER,
Solicitors for Defendant.

Indorsed: "No. 21. P. 1. R. 23. In U. S. District Court, Southern District of Florida, in Chancery. Marcos et al. vs. Wilson Cypress Company, Defendant. Motion for bond. Filed January 9, 1912."

C. E. JOHNSON, Deputy Clerk.

107 In the Circuit Court of the United States, in and for the Southern District of Florida.

Enrique del Pozo y Marcos et al.
vs.
Wilson Cypress Company et al.

The first question to be considered in the determination of this case is the validity of the defendant's title, which depends entirely upon the question of whether the property in question was subject to taxation by the State of Florida prior to the issue of the patent by the United States in 1895.

While it is not within the province of this Court to in any way question the integrity or sufficiency of the grant made by the patent, it is not considered that it is bound by a views of the executive in regard to the construction placed upon existing laws which lead up to such a patent, upon which the rights of the parties to this suit depend, and which in no way had been recognized or accepted until the issuing of the patent. It is considered that the act of 1825, referring the question of the validity of this grant to a board of commissioners, and their reporting the same for confirmation, did not confirm the title to the grant, but simply recommended that Congress confirm same. The act of 1827 only confirmed grants of less than 3,500 acres and conflicting grants. Thereafter, Congress by the act of 1828, upon the recommendation the commissioners, confirmed all grants not exceeding 3,500 acres, and under certain conditions, certain grants not exceeding a league square. This grant unquestionably exceeded 3,500 acres, and was then considered by the Executive Department as exceeding a league square, and as Congress had provided that grants of over a league square could be confirmed only upon the claimant ceeding the surplus to the United States, and as that was never done, the grant was never considered as having been
108 confirmed or binding upon the United States. That this was the understanding of the Executive Department and the General Land Office is clearly shown by their treatment of the land, and the records of that office. The letter of Louis A. Goff, of 1889, representing the Land Department, that the act of 1828 only confirmed grants of less than 3,500 acres and that he did not find any act of Congress authorizing a patent, and again repeated in his letter of 1890 (Ex-

hibits 4 & 5) and the letter of W. H. Milton, Jr., surveyor general, that the official plats of the Land Office did not show a survey of this grant but that there was a plat of the survey "loosely appended" to the township plat; and the fact that it appears by the patent itself that the survey was not approved by the surveyor general of Florida until June 18th, 1894, and the fact that a certain portion of this land had been patented to the state as swamp and overflowed land under the act of 1850, and then reconveyed to the United States upon the application of the Land Department, clearly show that the United States, through its department, did not recognize this grant as confirmed until the issue of the patent. It may be further remarked that the terms of the act of 1828, Sec. 1, provided that the grant as located by the claimants is to be bounded by sectional lines within the bounds of the original grant, not exceeding a league square. From the survey of this grant as patented, it is apparent that this grant is not located as bounded by sectional lines within the bounds of the original grant, not exceeding a league square, but that the grant as surveyed overlaps sectional lines on each of its four sides. From all of the evidence the Court is satisfied that up to the time of the order for the issue of the patent the United States had held this land as its property, and only then abandoned its claim to the heirs of the original grantee. Under the peculiar circumstances of this case, as it is found to have existed prior to the issue of the patent, there was no time at which the grantee or her
109 representatives could have legally and justly reduced this land to possession, taken off the timber, or used it as their own in any way. Under these circumstances it is not considered that the taxation of the land by the state, prior to the issue of the patent, was justified, and necessarily no claim of occupation or possession under tax deeds issued during that period would be valid; nor could persons holding such, rely upon the statute of limitations, or title by adverse possession.

Finding that the property granted by the patent was up to that time not subject to taxation, that that the titles obtained by the wrongful assessment and sale prior to the issue thereof were invalid and void, brings us to the question of lashes of the complainants, and their ancestors in not protecting their interest in this property. As we have stated, the patent was issued in 1895. It appears that the attorneys representing the

complainants, received the papers as trustee, or held the same in escrow, and immediately took steps to inform all parties making any claim to this land of the right of the complainants. The Wilson Cypress Co. is shown to have had ample notice of the existence of the efforts of the complainants to obtain this patent before it was issued, and of the actual issuance of the patent prior to their purchase of this property. Laches is not considered to mean or involve length of time in which unsuccessful efforts are made, but it is only evidenced by wilful or unreasonable neglect in not doing or attempting to do something to protect a title under the peculiar circumstances of each case. A person cannot be considered guilty of laches in an equity case where he has been and is making every reasonable and diligent effort to ascertain and enforce his rights. According to the circumstances of this case, the length of time that has elapsed and the efforts that have been made by the representative of the holders of the patent; the negotiations with a party who represented the knowledge and intelligence
110 of the corporation; the efforts made to compromise; the suit brought in 1904 dismissed on account of alleged unavoidable matters; all tend to show that there has been no wilful or unreasonable lack of diligence or effort to maintain the rights of the complainants. The holders of the tax titles had ample notice of the application for the confirmation of the grant, and must be held to have assumed the risk of its confirmation.

The next important question to be considered is whether the complainants have made such a prima facie showing of their pedigree as would justify the court in recognizing them as such. The rule for proving pedigree admits statements and declarations of deceased parties who were relatives of the family, made previous to and not in contemplation of the suit; also public records, and records of births, deaths and marriages kept in accordance with law or by religious societies in accordance with custom. This latter course has been resorted to and there have been introduced what must be considered certified copies of quasi public documents of the established religious society, bearing every appearance of truth and integrity and sworn to and unquestionably made of record at the time and under the circumstances claimed. It is shown in testimony that it is not only the custom, but the rule of such church keeping the records introduced in this case, at the place of the

residence of the parties whose pedigree is sought to be proven, that proper records were kept by the officers, under their oath of office, and although in a contested case where there are facts of pedigree denied, the allegations of scondary facts which may be stated in such records as to matters outside of the actual occurrence, viz: of birth, legitimacy and heirship, may not be accepted as conclusive, when there is positive evidence denying it, as in the Blackwell case, yet where it is only necessary to establish a prima facie case, and their is no contradictory evidence, it is considered that such church records may be recognized as quasi public records so as to
111 establish a prima facie case in behalf of the party claiming pedigree thereunder. Although the authorities have not been uniform in this regard, it is considered that upon the principal of heresay declarations, having been made and proven, they may be accepted until disputed by some direct evidence. The existence of these records has been fully proven and the Court finds that they establish a prima facie proof of the existence of certain of the complainants as the heirs of the grantee in the patent.

It is contended by the defendant that this suit should not be maintained because the complainants have a plain and adequate remedy at law. The law of Florida provides that a suit may be brought in chancery to remove a cloud from a title of land that is wild and unoccupied. The answer denies that this land is unoccupied and alleges that the defendant is in the actual occupancy of the land. The evidence shows that the defendant from 1900, when it purchased the land, has had an agent in charge of the property. The fact that an agent was in charge of the property, consisting of over 5,000 acres, does not negative the contention that it is wild and unoccupied. The testimony merely shows that the defendant maintained an agent for the protection of the land, who for a part of the time lived on or very near the land. Could such a quantity of land be occupied by one man simply through such an agency, as to justify the contention that he was in the actual possession of the entire tract? It makes no difference what the occupation or possession may have been while the title to the property was in the United States, and it is not considered that the possession during such time can be resorted to to determine whether or not the property was, after the issue of the patent, in the actual possession of the defendant through its agent

sufficient to legally bar a right to maintain a bill to remove cloud from title. The agent Wofford was on the land before the defendant purchased, and then followed Owens,
112 and after him one Boykin. It does not appear that there was at any time more than one agent on the land as agent for the defendants. The land is shown to be about two-thirds swamp and one-third pine, and its most valuable part is the swamp covered with cypress, and at no time does it appear that, subsequent to the patent, there has been any actual physical possession of this land by the defendant other than by an agent who may have lived on the land and went over it at short intervals. It is considered that the existence of such agency, where a party passes over the land occasionally for the purpose of seeing that no one took possession, was not such possession and occupation as would defeat the right of the complainants to maintain this bill.

It is contended that the defendant constructed a cabin on the land for their agent to live in, where he spent a part of his time. The complainants have denied that this cabin was on the grant. The positive testimony of the entire case and the admissions of the defendant being that the land is wild and unoccupied except by agency, and the defendant attempting to prove title by adverse possession, it is considered that the burden of proof would be on it to prove that the house of the agent was actually on the land. It has been frequently held by the Supreme Court of Florida, as well as by the New York courts, from which state the language of our statute was taken, that such occupation as is here shown would not be considered sufficient to justify the claim of adverse possession so as to permit the effect of the statute in favor of the jurisdiction of equity.

It is contended by the defendant that inasmuch as the entire number of heirs of the original grantee, Theresa Rodriguez, have not been made parties and properly proven to be such, that the suit must necessarily be dismissed for want of parties. There is a well recognized principle of equity known as the doctrine of representation, where a large number of parties having a common interest, a number of them bringing
113 a bill for the benefit of all, may severally be taken to represent all, so that a decree can be rendered in the case which will bind the rights of all. The necessity for the presence of so large a number as would produce an inconven-

ience in the adjustment of their rights or prevent the recovery of an equitable remedy, will not be permitted to protect an invalid claim or defeat the rights of an individual member, although the entire number may not be named as complainants. It is considered that the doctrine of representation is well established; and in this case there is such a community of interest in the relief sought by this bill, arising under the same title and right, although as yet the representatives of the numerous complainants have not been able to locate and substantially identify all the parties whom it might be considered will be finally entitled to participate in the benefits of this suit; yet it is considered that a sufficient number have been located, identified and proven to be permitted to represent all parties in interest, as much so as the patent has established their rights and conveyed to them the property. The rights of those not made parties are equally bound by the decree, inasmuch as there is a community of interest adverse to the interest of the defendant in this suit. The class of cases to which the principle has been more directly applied are creditors' bills, stockholders' bills, and bills of peace, but a suit to remove cloud from title in which numerous parties are interested is considered to be entitled to the application of such rule, as well as the others stated.

See Mitford & Tyler Eq. Pg. 22.
1 Daniel Chan. Pr. 191.
Adama Equity, 621.
Story Eq. Pleading 107.

114 The Court being of the opinion that the equities are with the complainant, a decree may be entered as prayed in the bill.

JAMES W. LOCKE, Judge.

Indorsed: 21-1 R. 23. U. S. District Court, Southern District of Florida. Pozo y Marcos et al vs. Wilson Cypress Co. Opinion. Filed Jan. 20, 1912.

E. O. LOCKE, Clerk.

115 In the District Court of the United States in and for the Southern District of Florida.

Enrique del Pozo y Marcos et al.
vs.
Wilson Cypress Company, a Corporation.

This cause coming on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed that the equities herein are with the complainants, and that the complainants, Felix Genaro Marcos; Ernesto Nunez del Pozo Esteban Garcia y Pechardo; Lorenzo Garcia y Pechardo; Louis Garcia y Pechardo; Richardo Garcia Ochandrino; Gertrudes Garcia Ochandrina and Maria Teresa Ochandrina are hereby found to be descendants and heirs at law of Teresa Rodriguez, the grantee in that certain patent issued by the United States on the 26th day of June, A. D. 1895, and recorded in Vol. 18, page 390 to 395 of the records of the General Land Office, and are entitled to an undivided interest in and to the lands hereinafter described, and for themselves and as representatives of all persons claiming title to said lands through the said Teresa Rodriguez, her heirs and legal representatives, are entitled to maintain this bill to remove cloud from the following described lands, to-wit:

116 Beginning at the N.W. corner of the claim at a pine marked XR—thence south on the west line of this survey 2.30 chains—X north line of Sec. 8, 76.80 chains east of the northwest corner; from said point a pine bears N. 60 degrees W. 20 links, and a pine bears S. 10 degrees W. 15 links—distant 82.60 chains X north line of Section 17 76.50 chains East from its N.W. corner; from said point a pine bears N. 20 degrees E. 40 links distant, 97 chains X branch, current west 162.65 chains, X north line of Section 20, 76.70 chains East from its N.W. corner (note, no description of a corner at this point in the field notes) 168 chains, the S.W. corner of this survey. From said corner a pine marked XR bears N. 60 degrees E. 60 links distance. Thence East, on second and south line of this survey, 3.80 chains X west line of Section 21, 74.55 chains north of its S.W. corner. From said point a pine bears South 60 degrees W. 30 links, and a pine bears S. 31 degrees E 20 links distant 51 chains to grass pond, 57.00 chains

X grass pond, 83.80 chains X west line Section 22 (in edge of branch of White Sulphur Spring), 74.60 chains north of its SW. corner (note no corner at this point described in the field notes) 85.00 chains X branch of Creek, 98.00 chains to hammock. 163.65 chains X west line of Section 23, 74.65 chains north from its SW. corner, from said point an iron tree bears S. 89° W. 15 links, and an iron tree bears S. 30° E. 25 links distant. 166.00 chains X a branch, current north; 217:00 chains to a swamp. 243.56 chains X west line of Section 24, 74.70 chains north of its SW. corner. From said point an ash bears S. 7° W. 77 links, and a mapel bears S. 30° E. 20 links distant; 270 chains to hammock, 301 chains X hammock; 304 chains to bay gall; 306.50 chains X bay gall. 315.00 chains to hammock; 323:40 chains X east line Section 24 (Range line) 74.80 chains north from its SE. corner. From said point a cabbage bears S. 15° W. 30 links and a cabbage bears S. 28° E. 12 links distant 327.00 chains (in Range 29 East) the SE. corner of the survey. (Note—No description of a corner in field notes). Thence north on the east line of the survey 5.80 chains X north line of Section 18, 76.45 chains west from its N. E. corner. From said point a myrtle bears north 35° E. 15 links, and a myrtle
117 bears S. 26° E. 20 links distant, 13.00 chains to deep creek; 14.00 chains X creek. 23.00 chains to scrub, 30.00 chains to swamp. 35.00 chains to hammock. 53.00 chains X hammock. 60.00 chains to pine and cabbage. 65.00 chains X pine and cabbage. 78.00 chains to pine and cabbage 86.00 chains X north line of Section 18, 67.30 chains west from the line of Petro Miranda's Grant. From said point a pine bears N. 62° E. 50 links, and a pine bears S. 61° E. 45 links distant. 104 chains to hammock. 123 chains X hammock 166.00 chains to north line of Section 7, 76.35 chains west from its N. E. corner. From said point a cabbage bears S. 30° E. 50 links and a cabbage bears N. 22° E. 30 links distant. 168 chains the N. E. corner of the survey. From said corner a pine bears N. 50° W. 26 links marked XR.

Thence west on the north line of this survey 3.50 chains X west line of Section 6 (Range line) 78.00 chains south of its N. W. corner. From said point a pine bears N. 25° E. 60 links and a pine bears N. 40° W. 70 links distant 15.00 chains (in Range line 28 East) to Swamp 23.00 chains X to hammock. 40.00 chains to pine and cabbage. 63.60 chains to burnt bay;

83.65 chains X west line of Section 1, T. 19, R. 28—77.89 chains south of its N. W. corner. (Note—No corner described at this point). 97.00 chains to hammock; 125.00 chains to creek. 125.60 chains X creek. 163.81 chains X west line of Section 7, 77.65 chains south from its N. W. corner. From said point a water oak bears north 28° W. 41 links, and a live oak bears N. 60° E/17 links distant. 167.00 chains X hammock. 243.70 chains X west line of Section 3, 77.60 chains south of its N. W. corner. (Note—No description of corner at this point in the field notes). (last 80.00 chains scrubby) E. 23.10 chains X west boundary of Section 4, 77.85 chains south of its N. W. corner. From said point a pine bears N. 43° E/10 links distant 326.11 chains to N. W. corner of this survey and place of beginning, being Section 37, Township 19, South of Range 28, East, and Sertion [Section] 41, Township 19, South of Range 29, East of the Principal Meridian, Florida, containing five thousand four hundred and eighty-six acres and forty hundredths of an acre.

It is further ordered, adjudged and decreed that
118 the certain tax deed dated the 5th day of July, A. D. 1852, to that portion of the above described lands designated as Section 37 of Township 19, South of Range 29, East, for the taxes recited in said deed to be due the State of Florida on said land for the years 1845 to and including the year 1851, to one John Stark, which said deed has been copied into the public records of Orange County, Florida, in Deed Book "D," pages 277 and 278, on June 27th, A. D. 1855—

Also that certain tax deed dated the 23rd day of April, A. D. 1872, issued by one Robert C. Partin, tax collector of Orange County, Florida, to one William Mills, for that portion of the above described lands designated as Sections 12, 13, 14, 15, 16, 9, 10, 11 and part of Section 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 in Township 19, South, Range 28, East, for the taxes recited in said deed to be due the County of Orange and State of Florida for the years 1868-1868 and 1869, which said deed is recorded in the public records of Orange County, Florida, in Miscellaneous Records "A," page 10, on October 14th, A. D. 1872—

Having been based upon assessments of said property prior to the issuance of the patent to said lands by the United States on the 26th day of June, A. D. 1895, and while the

validity of said Grant was denied by the United States through its duly organized Land Department, are and each of said tax deeds is absolutely null and void and of no effect, and each of said tax deeds hereinbefore recited are hereby set aside and declared absolutely void as a conveyance of said lands therein described or any part thereof, and is a cloud upon the title of the said Teresa Rodriquez, her legal representatives and heirs at law.

It is further ordered, adjudged and decree that
119 the certain deed from Edwin Sandys Dawes and George Augustus Thompson, as trustees of the Florida Land and Colonization Company, Limited, to the Florida Land and Colonization Company, Limited, of England, a corporation under the Corporation Acts of 1862 to 1898, dated the 2nd day of December, A. D. 1899, recorded in the public records of Lake County, Florida, in Deed Book No. 35, page 541, et seq., to the following lands: All those certain pieces, tracts or parcels of land situated and lying in Lake County, State of Florida, and being in the S. 1/2 of Sections 1, 2, 3, 4 and 5, and in the E. 1/2 of Sections 8 and 17, and in the N. 1/2 of Section 20, 21, 22, 23 and 24, and all of Sections 9, 10, 11, 12, 13, 14, 15 and 16, known as the Theresa Rodriquez or Powell Grant, all being Township 19, South of Range 28, East, except the N. 1/2 of the N. W. 1/4 of Section 9, and except sixty acres in Section 9, between the Mill road and center line running north and south in said section, deeded to Smith & Clifford, containing 5366 acres of land more or less—

And that certain deed from the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1862 to 1898 of Great Britain, to the Wilson Cypress Company, a corporation existing under and by virtue of the laws of the State of Florida, the defendant herein, dated the 3rd day of May, A. D. 1900, that certain tract of land situated in Lake County, Florida, and more particularly described as Section 37 of Township 19, South of Range 28, East, and Section 41 of Township 19 of Range 29, East, and known as the Theresa Rodriquez Grant (sometimes called the Powell or Sanford Grant) excepting therefrom two pieces of land heretofore sold and described as follows: N. 1/2 of N. W. 1/4 of Section 9, and sixty acres deeded to Smith & Clifford in Sec. 9, between the Mill road and the center line running

north and south of said section, both tracts being in
120 Township 19, South of Range 28, East, said land containing in all about 5366 acres of land and water more or less, said deed being recorded in Deed Book No. 35, pages 593 to 595 of the Public Records of Lake County, Florida.

Be and the same are and each of the said deeds is hereby set aside and declared absolutely null and void and of no effect as a conveyance of the lands therein described, or any part thereof as against the said complainants last herein named, and all persons claiming under them or any of them and as against all others the legal representatives of said Teresa Rodriquez, parties to this suit, as a cloud upon their title to said lands patented to Teresa Rodriquez, her heirs, assigns and legal representatives as aforesaid.

It is further ordered, adjudged and decreed that the defendant, Wilson Cypress Company, has no estate, right, title or interest in and to said tract of land hereinbefore described as patented to the said Teresa Rodriguez and her heirs and legal representatives, or any part thereof, under or by virtue of the said several deeds hereinbefore set out and cancelled, or any part of them, and it is further ordered, adjudged and decreed that the defendant, Wilson Cypress Company, its officers and agents, and all persons claiming by, through or under said defendant corporation since the filing of the bill of complaint herein, are hereby forever enjoined from setting up or claiming any title under and by virtue of said deeds hereinbefore set forth and set aside, or any of them, to the said lands described in said patent from the United States to Teresa Rodriquez, her heirs and legal representatives, and which are hereinbefore set out and described or any part thereof, and from entering upon, taking or holding possession thereof, or occupying the same, or any part thereof or cutting or removing any wood or lumber therefrom under claim or right derived from said deeds in this decree set out and herein set aside and declared null and void, or
121 any of them, and said defendant corporation, Wilson Cypress Company, is forever enjoined from setting up or claiming any right or interest in said lands or any part thereof, by virtue of any occupancy of any part thereof prior to the rendition of this decree, by its agents, servants or employees under claim of ownership under any of said deeds

herein set aside, or under authority from any person claiming ownership of said lands under said deeds or any of them.

It is further ordered, adjudged and decreed that the defendant, Wilson Cypress Company, do pay the costs of this suit to be taxed by the clerk of this Court.

Jacksonville, Fla., Jan. 13, 1912.

JAMES W. LOCKE, Judge.

Indorsed: 21 R 23. U. S. District Court, Southern District of Florida. Enrique del Pozo Y Marcos, et al., vs. Wilson Cypress Co. Final Decree. Filed Jan. 13, 1912. E. O. Locke, Clerk.

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122 ASSIGNMENT OF ERRORS OF THE WILSON CYPRESS COMPANY, A CORPORATION UNDER THE LAWS OF THE STATE OF FLORIDA, DEFENDANT IN THE ABOVE ENTITLED CAUSE AND APPELLANT ON APPEAL.

In the District Court of the United States in and for the Southern District of Florida.

Enrique del y Marcos, et al., Complainants,
vs.
Wilson Cypress Company, Defendant.

Now on this 20th day of January, A. D. 1912, comes the Wilson Cypress Company, a corporation existing under the laws of the State of Florida, and says that in the record and proceedings in the above entitled cause there is manifest error, and that the Court erred in the decree entered therein on the 13th of January, 1912, in the following particulars, to-wit:

1. The Court erred in making and entering the said order and decree herein, dated the 13th of January, 1912, wherein and whereby it is ordered, adjudged and decreed that the complainants, Felix Genaro Marcos, Ernesto Nunez del Pozo, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Louis Garcia y Pechardo, Ricardo Garcia Ochandrina (or Ochanda-

rena) Gertrudis Garcia Ochandrina (or Ochandarena) and Maria Teresa Ochandrina (or Ochandarena) were found to be descendants and heirs at law of Teresa Rodriguez, as mentioned in said decree, and entitled to an undivided interest in and to the lands therein described.

123 2. The Court erred in ordering, adjudging and decreeing in its said decree herein, dated January 13, 1912, that the said complainants, Felix Genaro Marcos, Ernesto Nunez del Pozo, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Louis Garcia y Pechardo, Ricardo Garcia Ochandrina (or Ochandarena) Gertrudis Garcia Ochandrina (or Orchandarena) and Maria Teresa Ochandrina (or Ochandarena) for themselves and as representatives of all persons claiming title to the lands described therein through the said Teresa Rodriguez, her heirs and legal representatives, are and were entitled to maintain the bill in said cause to remove cloud upon the lands described in said decree.

3. The Court erred in ordering, adjudging and decreeing in its said decree, dated January 13th, 1912, herein, that the tax deed, dated the 5th of July, A. D. 1852, to that portion of the said lands described in the decree designated as Section 37 of Township 19, South of Range 29, East, for the taxes recited in the said deed to be due the State of Florida on said lands for the years 1845 to and including the year 1851, to one John Stark, which said deed has been copied into the public records of Orange County, Florida, in Deed Book "D," pages 277 and 278, on June 27, A. D. 1885, is null and void and of no effect, and are by said decree set aside and declared absolutely void as a conveyance of said lands therein described, or any part thereof, and is a cloud upon the title of the said Teresa Rodriguez, her legal representatives and heirs at law.

124 4. The Court erred in and by its said decree herein, dated January 13, 1912, in ordering, adjudging and decreeing that the tax deed dated the 23rd day of April, A. D. 1872, issued by one Robert C. Parker, tax collector of Orange County, Florida, to one William Mills for that portion of the lands described in said decree designated as Sections 12, 13, 14, 15, 16, 9, 10, 11 and part of Sections 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 in Township 19, South, Range 28,

East, for the taxes recited in said deed to be due the County of Orange and State of Florida, for the years 1867-1868 and 186?, which deed is recorded in the public records of Orange County, Florida, in Miscellaneous Records "A," page 10, on October 14th, A. D. 1872.

5. The Court erred in and by its said decree herein, dated January 13, 1912, in ordering, adjudging and decreeing that the said deeds therein described and above mentioned, to-wit, one to John Stark, dated the 5th of July, 1852, and the one to William Mills above mentioned, dated the said 23rd of April, 1872, both as above described, having been based upon assessments for said property prior to the issuance of the patent to said lands by the United States on the 26th day of June, A. D. 1895, and while the validity of said Grant was denied by the United States through its duly organized Land Department, are and each of said tax deeds is absolutely null and void and of no effect, and are by said decree set aside and declared absolutely void as a conveyance of said lands therein described or any part thereof, and is a cloud upon the title of the said Teresa Rodriguez, her legal representatives and heirs at law.

6. The Court erred in and by its said decree herein, dated January 13th, 1912, in ordering, adjudging and decreeing that the certain deed from Edwyn Sandys Dawes and George Augustus Thompson, as trustees of the Florida Land and Colonization Company, Limited, to the Florida Land and Colonization Company, Limited, of England, a corporation under the Corporation Acts of 1862 to 1898, dated the 2nd
125 day of December, A. D. 1899, recorded in the public records of Lake County, Florida, in Deed Book #35, page 541, et seq., to the following lands: All those certain pieces, tracts or parcels of land situated and lying in Lake County, State of Florida, and being in the S. 1/2 of Sections 1, 2, 3, 4 and 5, and in the E. 1/2 of Sections 8 and 17, and in the N. 1/2 of Sections 20, 21, 22, 23 and 24, and all of Sections 9, 10, 11, 12, 13, 14, 15 and 16, known as the Theresa Rodriguez or Powell Grant, all being in Township 19, South of Range 28, East, except the N. 1/2 of the NW. 1/4 of Section 9, and except sixty acres in Section 9, between the Mill road and center line running north and south in said

section, deeded to Smith & Clifford, containing 5366 acres of land, more or less, is by said decree set aside and declared absolutely null and void and of no effect as a conveyance of the lands therein described or any part thereof, as against the said complainants last therein mentioned and all persons claiming under them or any of them and as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, as a cloud upon their title to said lands patented to Teresa Rodriguez, her heirs, assigns and legal representatives as aforesaid.

7. The Court erred in and by its said decree herein, dated January 13th, 1912, in ordering, adjudging and decreeing that that certain deed from the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1862 to 1898 of Great Britain to the Wilson Cypress Company, a corporation, under and by virtue of the laws of the State of Florida, the defendant herein, dated the 3rd day of May, A. D. 1900, of that certain tract of land situated in Lake County, Florida, and more particularly described as Section 37, Township 19, South of Range 28, East, and Section 41 of Township 19 of Range 29 East, and known as the
126 Theresa Rodriguez Grant (sometimes called the Powell or Sanford Grant) excepting therefrom two pieces of land heretofore sold and described as follows: N. 1/2 of NW. 1/4 of Section 9, and sixty acres deeded to Smith & Clifford in Section 9, between the Mill Road and the center line running north and south of said section, both tracts being in Township 19, South of Range 28, East, said land containing in all about 5366 acres of land and water, more or less, said deed being recorded in Deed Book No. 35, pages 593 to 595 of the Public Records of Lake County, Florida, is by said decree set aside and declared absolutely null and void and of no effect as a conveyance of the lands therein described, or any part thereof, as against the said complainants last therein mentioned, and all persons claiming under them or any of them and as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, as a cloud upon their title to said lands patented to Teresa Rodriguez, her heirs, assigns and legal representatives as aforesaid.

8. That the Court erred in and by its said decree herein,

dated January 13th, 1912, in ordering, adjudging and decreeing that the said deed from Edwyn Sandys Dawes and George Augustus Thompson, as trustees of the Florida Land and Colonization Company, Limited, to the Florida Land and Colonization Company, Limited, of England, a corporation under the Corporation Acts of 1862 to 1898, dated the 2nd day of December, A. D. 1899, recorded in the Public Records of Lake County, Florida, in Deed Book No. 35, page 541, et seq., be set aside and declared absolutely null and void as a conveyance of said lands as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, than the complainants found and adjudged by name to be descendants and heirs at law of Teresa Rodriguez in said decree, and as a cloud upon their title to said lands mentioned in said decree.

127 9. That the Court erred in and by its said decree herein, dated January 13th, 1912, in ordering, adjudging and decreeing that the said deed from the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1862 to 1898 of Great Britain, to the Wilson Cypress Company, a corporation existing under and by virtue of the laws of the State of Florida, dated the 3rd day of May, A. D. 1900, mentioned in said decree, be set aside and declared absolutely null and void as a conveyance of said lands as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, than the complainants found and adjudged by name to be descendants and heirs at law of Teresa Rodriguez in said decree, and as a cloud upon their title to said lands mentioned in said decree.

10. That the Court erred in its said decree herein, dated January 13th, 1912, in ordering, adjudging and decreeing that the defendant, Wilson Cypress Company, has no estate, right, title or interest in and to said tract of land described in said decree, to-wit, as patented to the said Teresa Rodriguez and her heirs and legal representatives, or any part thereof, under and by virtue of the said several deeds attempted to be cancelled in and by said decree.

11. The Court erred in and by its said decree of January 13th, 1912, herein, in ordering, adjudging and decreeing that the defendant, Wilson Cypress Company, its officers and agents

and all persons claiming by, through or under said defendant, a corporation, since the filing of the bill of complaint, are enjoined from setting up or claiming any title under
128 and by virtue of said deeds decreed to be cancelled in and by said decree to its said lands mentioned therein.

12. That the Court erred in and by its said decree of January 13th, 1912, in ordering, adjudging and decreeing that the said defendant, Wilson Cypress Company, its officers and agents, and all persons claiming by, through or under it since the filing of the bill herein should be enjoined from entering upon, taking or holding possession of the lands therein mentioned or occupying the same or any part thereof, or cutting or removing any wood or lumber therefrom under the said deeds mentioned in said decree and decreed therein to be cancelled.

13. The Court erred in and by its said decree of January 13th, 1912, in enjoining and restraining the Wilson Cypress Company from setting up or claiming any right or interest in said lands by virtue of any occupancy of any part thereof under any of said deeds as stated in said decree.

14. The Court erred in and by its said decree of January 13, 1912, in holding and determining that the said lands therein described were not subject to taxation, and were not legally assessed and sold for the non-payment of taxes for the years 1845 to 1851, inclusive, as therein mentioned in said decree.

15. That the Court erred in and by its said decree of January 13, 1912, in holding and determining that the said lands therein described were not subject to taxation, and were not legally sold for the non-payment of taxes for the years 1867-1868, 1869, inclusive, as therein mentioned in said decree.

129 16. The Court erred in holding and determining that the said Teresa Rodriguez Grant was not a confirmed or complete Grant prior to the Act of Congress of 1828.

17. The Court erred in holding and determining that the said Grant was never considered as having been confirmed

or binding upon the United States prior to the issuance of the said patent.

18. The Court erred in holding and determining that the survey of said Grant was not approved until June 18th, 1894.

19. The Court erred in holding and determining that until the issuing of patents to the said lands the United States had held these lands as its property.

20. The Court erred in holding and determining that prior to the issue of the patent, Teresa Rodriguez, the grantee, and her representatives, could not have legally and justly reduced the said land to possession, taken off the timber or used it as their own in any way.

21. The Court erred in holding and determining that prior to the issue of the patent, no claim of occupation or possession under tax deeds issued during that period would be valid.

22. The Court erred in holding and determining in said suit that persons holding tax deeds could not rely upon the statutes of limitations for title by adverse possession to said lands.

130 23. The Court erred in holding and determining that complainant and their ancestors were not barred by laches in the said cause, and in not protecting their interest in the said property.

24. The Court erred in holding and determining that the said complainants and the said Teresa Rodriguez and her representatives have not been guilty of willful or unreasonable lack of diligence or effort to maintain their rights.

25. The Court erred in holding and determining that the defendant had notice of the existence of the efforts of the complainants to obtain said patent before it was issued and of the issuance of the patent prior to their purchase of this property.

26. The Court erred in holding and determining that the holders of the tax titles mentioned in said cause had ample

notice of the application for the confirmation of the Grant and must be held to have assumed the risk of its confirmation.

27. The Court erred in holding and determining that the alleged Church Records introduced in evidence by complainants could be received in evidence to establish the pedigree of complainants and the rights of complainants.

28. The Court erred in holding and determining that the existence of said Church Records has been fully proven, and that they establish a prima facie proof of the existence of certain of the complainants as the heirs of the grantee.

131 29. The Court erred in holding and determining that the equities in this suit were with the complainants, and that this suit in equity could be maintained and that complainants did not have a plain and adequate remedy at law.

30. The Court erred in holding and determining that the possession of the defendant, shown by the evidence, was not such as to prevent complainants from maintaining this suit in equity.

31. The Court erred in holding and determining that the defendant in attempting to prove title by adverse possession had the burden of proof to prove that the house occupied by its agent was actually on the land.

32. The Court erred in holding and determining in the said suit that under the statutes of Florida the occupancy as shown by complainants was not sufficient to justify the claim of adverse possession so as to permit the statutes of limitation in this case.

33. The Court erred in holding and determining that the suit should not be dismissed for want of parties.

34. The Court erred in holding and determining that under the doctrine of representation the complainants who had proved their pedigree, represented all of the heirs of Teresa Rodriguez in maintaining this bill, and that the decree herein

should be for the benefit of all such heirs at law of Teresa Rodriguez, although not made party complainants or the pedigree of some of the heirs not having been proven.

132 35. The Court erred in making and entering its said final decree of January 13, 1912, in favor of the complainants herein, as therein provided and decreed.

COOPER & COOPER,
E. E. HASKELL.
Solicitors for Wilson Cypress Company, a Corporation. Defendant and Appellant.

January 25th, 1912.

Indorsed: "21. R. 23. In U. S. District Court, Southern District of Florida. Enrique del Pozo y Marcos, et al., vs. Wilson Cypress Company. Assignments of Errors. Filed Jan. 20, 1912."

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133 ENTRY OF APPEAL OF THE WILSON CYPRESS COMPANY, A CORPORATION UNDER THE LAWS OF THE STATE OF FLORIDA.

In the District Court of the United States in and for the Southern District of Florida.

Enrique del Pozo y Marcos, et al., Complainants,
vs.
Wilson Cypress Company, Defendant.

Now comes the Wilson Cypress Company, a corporation under the laws of the State of Florida, and feeling itself aggrieved by the decree rendered and entered in the above entitled cause on the 13th of January, 1912, does hereby take and enter an appeal from the said decree and order to the Circuit Court of Appeals for the Fifth Judicial Circuit of the United States, and prays that this, its bill, may be allowed, and a supersedeas be granted, and that a transcript of the record and proceedings and papers upon which the said decree was

made, duly authenticated, may be sent to the Circuit Court of Appeals for the Fifth Circuit of the United States.

COOPER & COOPER,
E. E. HASKELL,
Solicitors and of Counsel for
Defendant, Wilson Cypress
Company, a Corporation.

And now, on this 20th day of January, 1912, it is ordered in open Court that the said above appeal in the above entitled cause be allowed as prayed for above, and that upon the filing in said cause of a good and sufficient bond in the sum of five thousand dollars ($5,000) conditioned according
134 to law, said appeal do operate as a supersedeas of each and every portion of the said decree dated January 13th, 1912, so appealed from in said cause, save and except the provision in said decree and the portion thereof enjoining the said defendant, Wilson Cypress Company, its officers and agents and all persons claiming by, through or under said defendant, a corporation, since the filing of the bill of complaint herein, from cutting or removing any wood or lumber from the said lands involved in said suit, described in the said patent therein mentioned from the United States to Theresa Rodriguez, her heirs and legal representatives.

Done and ordered in open Court this 20th day of January, 1912.

JAMES W. LOCKE, Judge.

Indorsed: "21. R. 23. In U. S. District Court, Southern District of Fla. Enrique del Pozo y Marcos vs. Wilson Cypress Company. Entry of Appeal. Filed Jan. 20, 1912. E. O. Locke, Clerk."

135 In the District Court of the United States in and for the Southern District of Florida.

Enrique del Pozo y Marcos, et al., Complainants,
vs.
Wilson Cypress Company, Defendant.

Know all men by these presents, that we, the Wilson Cypress Company, a corporation, and/.....
.....
are held and firmly bound unto Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Cristina del Pozo y Marcos, by her husband, Alejandro Nunez Villavicencio y Alvarez, her next friend, Maria Piler Marcos y Pozo, by her husband, Ysidro Martin Martinez y Sanchez, her next friend; Felix Genaro Marcos y Diaz, Adelida Garcia y Pechardo, widow of Urbana Codina, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Carmen Garcia y Pechardo by Ysidro Zertucha, her husband and next friend, Rafaela Garcia y Pechardo by Maximo Zertucha, her husband and next friend, Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvassess, otherwise called Alvarez, Alfonso Garcia y Pechardo, Ricardo Garcia Alvasses; Margarita Alvasses de Garcia, widow, Ricardo Alvasses Garcia, Alfonso Alvasses Garcia, Miguel Alvasses Garcia, Luis Alvasses Garcia; Maria Teresa Garcia y Ochandarena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena, Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez, Amelia Pozo y Nunez by Saladrigas, her husband and next friend, Alfredo
136 Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Fabre, Concepcion Pozo y Fabre by ..... Reyes, her husband and next friend, in the sum of five thousand dollars ($5,000) for the payment of which well and truly to be made, we bind ourselves and each of us, our successors, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 25 day of January, 1912.

Whereas, the Wilson Cypress Company, a corporation, has prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the order and decree

entered in the above entitled cause on the 13th of January, 1912.

Now, therefore, the condition of this obligation is such that if the above named Wilson Cypress Company should prosecute said appeal to effect, and if it fails to make its appeal good, shall answer all damages and costs, then this obligation shall be void, otherwise the same shall remain in full force and effect.

In witness whereof, the said obligors have executed the foregoing obligation and bond by their respective officers duly authorized thereunto, and have caused their respective corporate seals to be thereunto affixed and the said obligation and bond to be attested by their proper officers thereunto duly authorized this 25 day of January, 1912.

Seal of Wilson Cypress Company a Corporation.

WILSON CYPRESS COMPANY.
By ASAD E. WILSON,
As Vice-President Executing Foregoing Bond in the Absence of the President of Said Coompany.

Attested with corporate seal of Wilson Cypress Company.
FRED H. WILSON,
As Secretary and Custodian of the Seal of Said Company.

Seal of Indemnity Co.

REGAL INDEMNITY COMPANY.
By R. W. POWERS, Attorney in Fact.
ALBERT W. H. LONG,
Consulting Attorney.

137 The above appeal bond of the Wilson Cypress Company approved this 26th day of January, 1912.
E. O. LOCKE, Clerk.

Indorsed: "Appeal Bond." Filed Jan. 26, 1912. E. O. Locke, Clerk.

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138 MASTER'S REPORT OF TESTIMONY.

In the Circuit Court of the United States, Southern District of Florida.

Enrique del Pozo y Marcos, et al., Complainants,
vs. In Chancery.
Wilson Cypress Company, Defendant.

I, C. B. Robinson, special master appointed by the Court to take the testimony in the above named cause, respectfully report to the Court that under said appointment, which appears upon the files in said cause and pursuant to notice herein given, the taking of said testimony was begun at the office of Messrs. Cooper & Cooper, counsel for the defendant, in the City of Jacksonville, at 10 o'clock A. M., Monday, November 30th, 1908.

Present, J. H. Jones, Esq., and W. W. Dewhurst, Esq., solicitors for the complainants, and E. E. Haskell, Esq., and J. C. Cooper, Esq., solicitors for the defendant, and the said Special Master.

And these upon the following testimony was taken, the complainant offered in evidence the following extracts from Volume Four of American State Papers, Gales & Season Edition, relating to the claim of Teresa Rodriguez against the United States, to-wit, the following heading on page 697: "Cases Reported this Session." and also that portion of page 705 of the same book, which is herein copied and made a part of this report, as follows, to-wit:

139 No. 2 b (22)—See Report No. 3.

Teresa Rodriguez vs. The United States for Five Thousand Five Hundred Acres of Land.

Memorial.

To the Honorable the Commissioners Appointed to Ascertain the Claims and Titles to Lands in East Florida:

The memorial of Teresa Rodriguez, widow of Miguel Marcos, for and on behalf of herself, and as guardian to her

children, the heirs of the said Miguel Marcos, respectfully showeth: That your memorialist claims title to a tract of land consisting of five thousand five hundred acres, situated on two two margins of a creek running from the west and empties into the River St. Johns, about two miles north of a lake known by the name of Long Lake—the mouth of the above creek is called "Big Spring," which said tract of land was granted to the said Miguel Marcos by Governor Estrada, October 18, 1815, in virtue of various royal orders, as appears by the original grant in the office of the public records in this city, kept by Wm. Reynolds, and a certified copy herewith presented, which land has never been surveyed. Your memorialist further presents that Don Miguel Marcos was a resident of this province for many years in the service of his Catholic Majesty, and that he was legally possessed of said tract when this territory was ceded to the United States. St. Augustine, December 1, 1823.

TERESA RODRIGUEZ.
By Her Attorney, J. W. SIMONTON.

(Translation).

Senor Governor: Don Miguel Marcos, first sergeant and sub-lieutenant by brevet of the corps of royal artillery detached to the city, with all respect, states to your excellency that he has served his Majesty for forty-one years in this class, and always commissioned by his chiefs for duty of the highest consideration, which, from his capacity and efficiency, have been placed in his charge, he has, furthermore, been in several actions, and particularly in the invasion of the year 1812, occasioned by the rebels of the province, in which he gave the strongest proofs of his valor, loyalty and
140 patriotism, always exposing himself to the greatest risks in defense of his king and religion. In attention to all that is set forth and availing himself of the royal bounty which his Majesty has been pleased to grant to all the officers, sergeants, soldiers and others who were under arms at that period of 1812, as respects giving them lands gratis in recompense for the proofs of valor and enthusiasm with which they have defended their country, for all which he prays your excellency that, attending to all which has been set forth

and also that he is married and charged with children, you will be pleased to grant him in absolute property five thousand five hundred acres of land, which are vacant, on the two banks of a creek which comes from the west and discharges itself into the River St. Johns, about two miles to the north of the lake known as "Long Lake," and the mouth of the said creek, called "Big Spring." A favor which he does not doubt to obtain from the strict justice which your excellency administers. St. Augustine, Florida, October 18, 1815.

MIGUEL MARCOS.

St. Augustine, Florida, October 18, 1815.

Let there be granted unto the interested, on the terms which he solicits, the lands indicated in this memorial, in virtue of the several royal orders which authorize to that effect, and that he may be able to prove this concession in any event, let the necesasry certificates be delivered to him from the secretary's office.

ESTRADA.

I certify the foregoing to be a true and correct translation from a document in the Spanish language on file in the office of the public archives.

F. J. FATIO, S. B. L. C.

Decree.

The board having ascertained that the foregoing is a valid concession for the five thousand five hundred acres of land made to Miguel Marcos, do therefore recommend it to Congress for confirmation. December 16, 1825.

141 To the introduction of which heading, "Cases Reported this Session," counsel for the defendant object, on the ground that same is only a portion of the entry in regard to the Teresa Rodriguez Grant, as covered by Report Number Three and found on page 571 of the same book.

The complainants also offered in evidence certified copy, under seal of the general land office of the United States Department of the Interior, of a letter from the Commissioner of Agriculture at Tallahassee, dated April 23rd, 1895. Letter quit claiming Sec. 12-13-14-15-19-28 Patented 1872. Quit claimed by State upon request of U. S. 1895.

To the introduction in evidence of which copy, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter or copy thereof evidence.

Whereupon, the said copy of letter was filed in evidence as Complainant's Exhibit No. 1 and is hereto attached and made a part of this report.

Complainants also offered in evidence a quitclaim deed from the Board of Trustees of the Internal Improvement Fund of the State of Florida to the United States, dated the 17th of April, 1895, to lands within the claim of Teresa Rodriguez.

To the introduction of which in evidence, defendant objects, upon the ground that same is irrelevant and incompetent.

Whereupon, the said deed was filed in evidence and is hereto attached and made a part of this report, as Complainant's Exhibit No. 2.

Complainants also offer in evidence certified copy of a letter from the Acting Commissioner of the General Land Office to the Commissioner of Agriculture at Tallahassee, dated May 2, 1895.

142 To the introduction of which in evidence, defendant objects, on the ground that the same is irrelevant and incompetent.

Whereupon, the said copy of letter was filed in evidence as Complainant's Exhibit No. 3, and is hereto attached and made a part of this report.

Complainants also offered in evidence certified copy of a patent from the United States, with plat attached, to the legal representatives of Teresa Rodriguez, of lands described as Section 37, in Township 19, South, Range 28, and Section 41, in Township 19, South of Range 29.

Defendant objects to the introduction of this patent in evidence, on the ground that same is immaterial and irrelevant, and because the patent only undertakes to relinquish such claim as the United States might then have, and that the title had previously passed by grant and confirmation of same, and by various conveyances and sales thereafter, under which defendant claims title.

Whereupon, the said certified copy was filed in evidence and it hereto attached and made a part of this report, as Complainants' Exhibit No. 4.

Complainants also offered in evidence certified copy under

the seal of the General Land Office of the United States Department of the Interior, of a letter from the Commissioner of the General Land Office to J. Thomas Turner, Dated October 29th, 1889.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter or a copy thereof evidence.

And the said copy was filed in evidence as Complainants' Exhibit No. 5 and is attached hereto and made a part of this report.

Complainants also offered in evidence a letter from
143 the Commissioner of the General Land Office to Butt & Silver, dated April 3rd, 1890.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter or a copy thereof evidence.

Whereupon, the said letter was filed in evidence as Complainants' Exhibit No. 6, and is hereto attached and made a part of this report.

Complainants also offered in evidence a letter from the assistant commissioner of the General Land Office to Cecil G. Butt, dated May 9, 1891.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter evidence.

Whereupon, the said letter was filed in evidence as Complainants' Exhibit No. 7, and is hereto attached and made a part of this report.

Complainants also offered in evidence a letter from the Surveyor General of Florida to the Commissioner of the General Land Office, dated June 18th, 1894.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter evidence.

And the same was filed in evidence as Complainants' Exhibit No. 8, and is hereto attached and made a part of this report.

Complainants then offered in evidence certified copy under the seal of the General Land Office of the United States of a letter from the Commissioner of the General Land Office to Shalley & Martin.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant and incompetent, there being no authority of law making such letter evidence.

Whereupon, the said letter was filed in evidence
144 as Complainants' Exhibit No. 9, and is hereto attached and made a part of this report.

One THOMAS D. SARIOL was then produced as a witness for the complainants, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Mr. Sariol, will you please state your name, age and residence?

A. Thomas D. Sariol; age, fifty-two; residence, Washington, D. C.

Q. Did you formely reside in Havana, Cuba?

A. I did, sir.

Q. For how many years?

A. For how many years in Havana?

Counsel:

Yes.

A. Ten years.

Q. Is your parentage Spanish?

A. Yes, sir.

Q. Do you speak the Spanish language?

A. I do.

Q. How long have you resided in Washington?

A. Sixteen years.

Q. While residing in Cuba where was your residence? Where in Cuda did you reside?

A. The last time I resided in Havana.

Q. What was your occupation while residing in Cuba?

A. As claim agent.

Q. As claim agent?

A. Yes; for various people of Spanish descent who had property in the United States.

Q. State whether or not you were engaged to prosecute claims to lands for persons claiming to be the heirs of former residents of Florida, under the Spanish sovereignty, whose ancestors had removed to Cuba?

To which question defendant objects, on the ground that same is irrelevant and incompetent.

A. I was.

Q. That was your business?

145 A. That was my business.

Q. Did you represent any considerable number of claimants to land in Florida?

To which question defendant objects, on the ground that same is irrelevant and incompetent.

A. I did, sir.

Q. State whether many or few.

To which question defendant objects, on the ground that same is irrelevant and incompetent.

A. A great many.

Q. Were you employed by persons claiming to be the heirs of Teresa Rodriguez to recover for them a grant of land in Florida, claimed to have been made to Teresa Rodriguez by Governor Estrada for five thousand five hundred acres of land?

To which question defendant objects, on the ground that same is irrelevant and immaterial, and contains facts or statements of facts to prove which this witness would not be competent, and that this witness' answer would not be the best evidence.

A. I was.

Q. What did you do to ascertain whether the persons claiming to be the heirs of Teresa Rodriguez were or not such heirs?

To which question defendant objects, on the ground that

same is immaterial and irrelevant, and that such evidence would not be the best evidence of the facts ascertained by this witness.

A. Well, I gathered my information first of all from the church records, from several of the members who at the time were living, and who were recognized among the community as reputable citizens, and knowing them to be the surviving heirs of Teresa Rodriguez.

Q. Did you meet and converse with any considerable number of persons claiming to be heirs of Teresa Rodriguez?

146 To which question defendant objects, on the ground that same is immaterial and irrelevant, and that such evidence would not be the best evidence of the facts ascertained by this witness.

A. I called on many members of different branches of the family, the surviving issues of Teresa Rodriguez, which gave me a knowledge as to their genealogy and their relationship.

Q. Did you receive powers of attorney from any of the persons claiming to be heirs of Teresa Rodriguez to represent them in the prosecution of their claim for the grant of lands in Florida made to Teresa Rodriguez, about 1880?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not the best evidence, and because it presupposes that the parties who made such powers were the heirs, which has not been established.

A. I got several powers of attorney from the heirs of Teresa Rodriguez.

And defendant moved to strike the last part of the foregoing answer, on the ground that it is incompetent to prove that the persons who made such powers of attorney were such heirs.

Q. State how powers of attorney for the recovery of lands are made in Cuba, and their contents.

To which question defendant objects, on the ground that

same is immaterial and irrelevant and does not seek the best evidence.

A. A power of attorney, according to the Spanish laws (and the Spanish laws are there now; it has not changed) the party interested appears before a notary public, and, besides the general information as to his name, age and so forth, states that he is the heir of a certain person
147 and that said person left such and such property in the United States, and that he is entitled to it as one of the heirs, and that he produces his birth certificates, marriage of his parents and death of his grandparents, as the case may be.

Q. Is that documentary evidence of marriage, birth and death submitted to the notary who makes the power?

To which question defendant objects, on the ground that same is immaterial and irrelevant and does not seek the best evidence.

A. Yes, sir; it is. Well, it is submitted to a notary, but they have them all in one, and the notary legalizes the signature of the parish priest. Another way of doing it is to legalize before the Episcopal Bishopric the signatures of the sacramental documents, which are the sacraments of birth, matrimony and death certificates.

Q. Those are what you mean by the sacramental documents?

A. Yes, sir.

Q. In the powers of attorney given you by the parties claiming to be the heirs of Teresa Rodriguez, were there baptism, marriage and death certificates of this family produced before the notary?

To which question defendant objects, on the ground that same is immaterial and irrelevant and does not seek the best evidence.

A. In some cases they were. In others they were made by the different priests of the Catholic churches in Havana and elsewhere in the Island of Cuba.

Q. In accepting this employment for the persons claiming to be the heirs of Teresa Rodriguez, did you investigate for

yourself the claims of heirship of the several parties, and the evidence of such heirship that existed in the records of marriages, births and deaths, in the Island of Cuba?

148 To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek the best evidence.

A. I did.
Q. How thorough was this search made by you?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. I made it as far as the knowledge I had with me could ascertain the information. The information came to me by the family.
Q. Was your investigation extended and generally complete?

To which question defendant objects, on the ground that same is irrelevant and immaterial and is too suggestive, and calls for the opinion of the witness.

A. It was.
Q. Did you inspect many official records?

To which defendant objects, on the ground that same is immaterial and irrelevant and is too suggestive, and calls for the opinion of the witness and seeks evidence which is not the best evidence.

A. I inspected all the records of the different parishes where the entries of these certificates are filed.
Q. Did you converse with any considerable number of persons who claimed, and were reputed in the community to be the descendants of Teresa Rodriguez?

To which question defendant objects, on the ground that same is irrelevant and immaterial and too suggestive, and does not seek the best evidence.

A. I did, sir.

Q. Are any of those persons now dead?

149 A. They are all dead, those I spoke to first are all dead.

Q. Did you receive any information as to the family relationship of persons claiming to be the descendants of Teresa Rodriguez, from any of these persons now dead?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek the best evidence.

A. I did, sir.

Q. Can you state from such information who were the descendants of Teresa Rodriguez, and any considerable number of persons now living who are the descendants of Teresa Rodriguez, or were so represented to be by any of the persons who claimed to be descendants of Teresa Rodriguez, now dead, with whom you conversed?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and not the proper mode of proving pedigree, and that it seeks evidence not the best evidence.

A. I conferred with a great many of those who claimed to be descended or had some interest through their ancestors in Teresa Rodriguez, quite a number of them.

Q. State, if you can, from such information given you by any of the persons then claiming to be descendants of Teresa Rodriguez, now dead, or from your inspection of the official records in Cuba of marriages, births and deaths, who are the direct descendants of Teresa Rodriguez?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and not the proper mode of proving pedigree, and because it seeks evidence not the best evidence, and on the ground that the witness has not shown such personal knowledge as would make him competent to testify to the facts inquired about.

A. There are so many of them that I cannot say them all—

150 Counsel:

I mean the direct descendants.

A. Well, there are five of them.

Q. Five of what? Teresa's children?

A. Teresa's children, yes. (Witness at this point takes from his pocket a written memoranda and examines it, consisting of three sheets of typewritten matter). I made a mistake in that. She had three children.

Q. Mr. Sariol, I believe you stated that you gained your information from some of their heirs of Teresa Rodriguez, as you have stated, who are dead, and from parish records. Please state from your knowledge so gained how many children Teresa Rodriguez left, of her own body?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and not the proper mode of proving pedigree, and because it seeks evidence not the best evidence, and on the ground that the witness has not shown such personal knowledge as would make him competent to testify to the facts inquired about, and on the further ground that the witness has already testified on this subject; and further, that the witness is testifying from a memoranda not sufficiently identified to show his right to testify from same.

A. Three.

Q. (Handing witness a number of papers). Please state what those papers are, generally.

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and does not seek the best evidence, nor proper evidence in the matters sought to be proved.

151 A. They are the marriage, birth and death certificates of the descendants of De Bernabe del Pozo y Marcos, son of Dorotea Marcos y Rodriguez, and grandson of Miguel Marcos Fuentes and Teresa Rodriguez; also the death certificate of Teresa Rodriguez and the death certificate of Bernabe del Pozo y Marcos.

Defendant moves to strike the foregoing answer, on the ground that it contains testimony that is not the best evidence, and is incompetent.

Q. In what language are those documents you hold in your hand? (Referring to same documents referred to in last question).

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. In Spanish.
Q. Were those official documents?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and the opinion of the witness.

A. Yes, sir.
Q. Do they bear the official stamp as used under the Spanish law, as used at that time?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. They bear the official seal.
Q. What relation would Bernabe be to Teresa Rodriguez?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and is not the proper mode of attempting to prove pedigree.

A. Grandson.

Q. I believe you testified that Teresa Rodriguez
152 left three children. Can you name them?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and that the witness is not shown to be competent to testify to these facts.

A. Miguel, Alta Gracia and Dorotea. (Referring to memorandum).

Q. Do you testify that from your own knowledge or from any memorandum that you have?

A. I testified from knowledge. I just refreshed my memory.

Q. What paper is that you have in your hand that you refreshed your memory from?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. It is the genealogical family tree of Teresa Rodriguez.

Q. How was that paper compiled?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek proper evidence or the best evidence.

A. It was compiled from data and documents obtained in the different parish churches in Cuba.

Q. I understand you to say it is from data and documents obtained in the parish churches. Is it the sacramental documents you speak of?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek proper evidence or the best evidence.

A. Yes.

Q. Was that information obtained by you by inspection of the parish churches and the sacramental documents or not?

153 To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek proper evidence or the best evidence.

A. It was.

Q. Did you derive any information from members of this family who are now dead, which is embraced in that memorandum you have?

To which question defendant objects, on the ground that

same is immaterial and irrelevant, and does not seek the proper evidence nor the best evidence.

A. Yes; I derived this information from many members that are now dead.

Q. Then, as I understand it, the memorandum you have is made from official information, and from information from deceased members of this Rodriguez family? Is that true or not?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence which is not proper evidence and is not the best evidence.

A. It is true.

Q. Please refresh your memory by that document and state who were the descendents of Miguel Marcos, whom you have testified was a son of Teresa Rodriguez?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and not the proper mode of proving pedigree, seeks evidence not the best evidence, and the witness is not shown to be qualified or competent to testify to the facts inquired about.

Mr. Cooper:

Before that question is answered defendant's solicitors ask permission of the Master to now inquire of the witness who made up this memorandum he holds in his hand and when it was made.

154 Cross-Examination.

By Mr. Cooper: As to the Memorandum Mentioned.

Q. Who made this memorandum you now hold in your hand, from which you testify, and when and where was it made?

A. This, I think, was made by Mr. Jones, and was made in Orlando.

Q. And when?

A. Two or three days ago. I don't know, he didn't tell me.

Q. Who is the Mr. Jones you refer to? You mean Mr. J. H. Jones, one of the solicitors in this case?

A. J. H. Jones.

Q. One of the solicitors now present at this examination?

A. Yes, sir.

Direct Examination Continued by Mr. Jones.

Q. At whose request and under whose directions was that prepared?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. By me.

Q. Did you furnish Mr. Jones the data with which to prepare that memorandum?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent.

A. I did.

Q. Did you inspect that memorandum afterwards to see if your directions had been followed out?

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent.

A. I did, sir.

Q. Was that paper the result of and does it properly set forth your knowledge of these heirs, gained as you have heretofore stated?

155 To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and asks for a conclusion of the witness, and seeks evidence not the best evidence, and because the witness is not shown to be competent or qualified to testify to the facts inquired about.

A. Yes, sir.

Q. Now, you can answer the question. Please state who

were the descendants of Miguel Marcos, son of Teresa Rodriguez?

To which question defendant objects, on the ground that same is irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent or qualified to testify to the facts inquired about, and it is not the proper mode of proving pedigree, and that the memorandum witness is testifying from is not a competent memorandum to be used by the witness.

A. He left two sons, Miguel Marcos y Diaz and Felix Genara Marcos y Diaz.

Q. Is Miguel Marcos y Diaz living?

To which question defendant objects, on the ground that same is irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent or qualified to testify to the facts inquired about, and it is not the proper mode of proving pedigree.

A. He is dead.

Q. Did you have any acquaintance with him?

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent.

A. I did, sir.

Q. Did you have conversation in regard to the family descendants with him?

156 To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence.

A. I had.

Q. Was it in connection with representing them in this class?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and incompetent and leading, and because it seeks evidence not the best evidence.

A. It was.

Q. Did you get your information in regard to this family history and descent from any grandchildren of Teresa Rodriguez, in conversation with them?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and incompetent and leading, and seeks evidence not the best evidence, and because it is not shown that the witness is competent or qualified to testify as to the facts inquired about, and it is not the proper mode of proving pedigree.

A. I did, sir.

Q. State which of those grandchildren you derived your information from.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and not the proper mode of proving pedigree.

A. I derived it from Miguel Marcos, Quentin del Pozo, Bernabe del Pozo y Marcos, Maria del Pilar del Pozo y Marcos, Christiana del Pozo y Marcos and Enrique del Pozo y Marcos.

Q. Are those persons you mention living or dead?

157 To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is qualified or competent to testify to the facts inquired about, and because it is not the proper mode of proving pedigree.

A. They are dead.

Q. Are you acquainted with one Felix Genaro Marcos y Diaz?

A. I am.

Q. State whether he is descended from Teresa Rodriguez and what relation he is to her.

To which question defendant objects, on the ground that same is irrelevant and incompetent and seeks evidence not the

best evidence, and because it is not shown that the witness is qualified or competent to testify to the facts inquired about, and it is not the proper mode of proving pedigree.

A. He is a relation of Teresa Rodriguez and a grandson.

Q. Please state whether your knowledge as to his descent and relationship, and so forth, to Teresa Rodriguez, was derived from the sources you have already testified about, to-wit, from the church records, and the conversation with the deceased members of this family.

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and leading and seeks evidence not the best evidence, and because it is not shown that the witness is competent or qualified to testify as to the facts inquired about, and it is not the proper mode of proving pedigree.

A. I derived it from the church records, and from information obtained from the divers members of the family.

Q. You have stated that Teresa Rodriguez left three children; please state now the descendants from those three children. You can

158 To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is qualified or competent to testify to the facts inquired about, and it is not the proper mode of proving pedigree.

A. Mr. Jones has prepared a paper showing the whole family genealogy of Teresa Rodriguez and the descendants, under my direction, which is the paper I have been referring to in my testimony and refreshing my memory from that paper, and the sources of information I have indicated. I state that the family genealogy is as follows: (Reading from paper or memorandum referred to).

Genealogy of Family Teresa Rodriguez.

Teresa Rodriguez, (mu) 1850
(m) Miguel Marcos, (mu)
Hehenderos.
Miguel Marcos y Rodriguez,
Altagracia Marcos y Rodriguez,
Dorotea Marcos y Rodriguez.
Miguel Marcos y Rodriguez (mu)
(m) .....Diaz (mu)
Herederos:
(1) Miguel Marcos y Diaz (mu)
(m) Caridad Acosta.
Herederos:
Miguel Marcos y Acosta (m)
Rodolpho J. Marcos y Acosta (m)
America Marcos y Acosta (s)
Ermenia Marcos y Acosta (s) (muss)
Josefina Marcos y Acosta (s)
(2) Felixx Genaro Marcos y Diaz.
159 Altagracia Marcos y Rodriguez (mu)
(m) Augustin Garcis y Diaz (mu)
Herederos:
(1) Genaro Garcia y Marcos (mu)
(m) Adela Pechardo (mu)
Herederos:
Adelaide Garcia y Pechardo (mu)
(m) Urbano Codina
Herederos:
Manuel Codina y Pechardo
Urbano Codina y Pechardo
Adela Codina y Pechardo
Genaro Codina y Pechardo
Amparo Codina y Pechardo
Maria Carmela Garcia y Pechardo (v)
Rafaela Garcia y Pechardo
(m) Ysidro Zertucha
Lorenzo Garcia y Pechardo
(m) Concepcion Valdez
Estaban Garcia y Pechardo (s)
Louis Felipe Farcia y Pechardo (s)
Fausto Garcia y Pechardo (s) (muss)

(2) Miguel Garcia y Marcos (mu)
(m) Margharita Alvases (mu)
Herederos:
Miguel Garcia y Alvases.
(m) Maria Louisa Lopez.
Alfonso Garcia y Alvases (s)
Ricardo Garcia y Alvases (s)
Luis Garcia y Alvases (s)
(3) Gertrudis Garcia y Marcos (mu)
(m) Juan Bautista Diaz (mu)
Herederos:
Octavo (hijo) (mu) (ss)
Eduado (hijo) (mu) (ss)
Augustin (hijo) (mu) (ss)
Juan Bautista Marcos y Diaz (s)
Rafael Diaz y Marcos (vdo)
Flora Diaz y Marcos Belin (v)
(m) Belin (mu)
160 (4) Pedro Garcia y Marcos (mu)
(m) Rosa Lopez y Pozo (mu)
Herederos:
Maria del Carmen Garcia Pechardo y del Pozo
(m) Maximo Zertucha.
(5) Augustin Garcia y Marcos (mu)
(m) Concepcion Ochandarena (mu)
Herederos:
Ricardo Garcia y Ochandarena (s)
Gertrudis Garcia y Ochandarena
Maria Teresa Garcia y Ochandarena.

Dorotea Marcos y Rodriguez (mu)
(m) Nicholas del Pozo (mu)
Herederos:
(1) Jose Quintin del Pozo y Marcos (mu) (s) (ss)
(2) Serafin " " " " " " "
(3) Basilio " " " " " " "
(4) Bernabe " " " " " " "
(5) Simeon " " " " " " "
(6) Nicolas " " " " " " "
(7) Teresa " " " " " " "
(8) (m) .....Arugelles " " " " "

Heredero:
Ladislao del Pozo y Arguelles.
(m) Amelia .....
(9) Mariad el Pilar del Pozo y Marcos (mu)
(m) Yisidro Martinez (mu)
Herederos:
Maria Martinez y Pozo
(m) Antonio Martin Revero
Maria Luisa Martinez y Pozo
(m) Jose Ladislao Rodelgo
Martin J. Martinez
(m) Celia Reyes.
(10) Christina del Pozo y Marcos (mu)
(m) Alejandro Xunez
Heredros:
Amelia Xunez del Pozo
(m) Gustavo Saladrigas
Ernesto Xunez del Pozo
161 (m) Maria Tejada
Alfredo Xunez del Pozo
Alejandro Xunez del Pozo (mu)
Consuelo Valdez y de la Tore
Herederos:
Arturo Xunez y Valdez
(11) Rosa del Pozo y Marcos (mu)
(m) Joaquim Fabre (mu)
Herederos:
Dolores Fabre del Pozo
(m) Jose Miguel Xuno
Concepcion Fabre del Pozo
(m) Joaquim Reyes
Rosa Fabre y del Pozo (s)
Maria Regla Fabre y del Pozo (s)
Joaquim Fabre y del Pozo (s)
Herederos:
Mario Fabre
Horacio Fabre
Raul Fabre
Amparo Fabre
del
(12) Euriene Pozo y Marcos (mu)
(m) Caridad Abrue

(m) .....Valera (prem s)
(m) .....
Herederos
Quentin Enrique del Pozo: Valera (mu)
(m) Catalina Zenos
Herederos:
Maria Louisa del Pozo
Christina
Caridad del Pozo Abrue
Pilar del Pozo Abrue
Maria de los Angeles del Pozo y Abrue.

162 This hearing was here adjourned to two o'clock P. M.

Two o'clock P. M. hearing resumed.

And the same witness, Thomas D. Sariol, then further testified as follows:

Direct Examination by Mr. Dewhurst Continued.

Q. How long have you been engaged in the business of prosecuting claims to land in Florida for parties in Cuba?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. Since 1883.

Q. How many claims to lands in Florida, how many different claims to land in Florida have you represented Cuban heirs in the prosecution of?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. About thirty.

Q. From your experience in the prosecution of these claims can you state approximately what would be the expense to obtain the official documents showing the marriages, births and deaths of the several parties named by you as the heirs of Teresa Rodriguez, as the present heirs of Teresa Rodriguez?

To which question defendant objects, on the ground that

same is irrelevant, immaterial and incompetent, and because it seeks evidence not the best evidence, and because the witness is not shown to be competent to give testimony upon the cost of the official records.

A. From five hundred to a thousand dollars, I believe.

Q. Is there any reason which you are aware of which would prevent the obtaining of the official documents as to the marriages, births and deaths of all those persons named
163 by you?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and because it seeks evidence not the best evidence, and because the witness is not shown to be competent to testify to the facts inquired about, and because it seeks a mere opinion.

A. None at all, I believe they could be obtained, unless at some church that had been burned during the war.

Q. Has any church been burned which contained these records to your knowledge?

To which question defendant objects, on the ground that it is immaterial and irrelevant, and incompetent, and seeks evidence not the best evidence, and because the witness is not shown to be competent to testify to the facts inquired about, and because it seems a mere opinion.

A. Only one that I know. That is in the City of Bayama, Province Santiago de Cuba.

Q. Are you familiar with the customs employed in Cuba in the execution of last wills and testaments?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and it is not shown that the witness is competent or qualified to testify as to the facts inquired about.

A. Yes.

Q. State what experience you have had in the matter of learning the method in which wills are executed in Cuba.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because it is not
164 shown that the witness is competent or qualified to testify as to the facts inquired about.

A. They are executed before a notary public.

Q. State how you know anything about how wills are executed in Cuba.

A. Well, I was for several years in a law office in the City of Havana, and had charge of the wills and deeds to property.

Q. State what you have learned, in your business as representative of the claimants prosecuting claims to lands in Florida.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence.

The Witness:
I don't understand the question.

Q. Well, state what you have learned in your capacity as representing claims for lands of claimants in Cuba, prosecuting claims to lands in Florida, as to the method of executing wills.

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and because the witness is not shown to be competent to testify to the facts inquired about.

A. Well, in the execution of wills of claimants?

Counsel:
No. Haven't you seen a good many wills?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent.

A. Oh, yes, I have seen a good many wills, of course.

Q. Haven't you had occasion to see a great many wills in that business?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent.

165 A. Yes.

Q. State how wills are executed under the Spanish law.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify to what the Spanish law is.

A. There are several ways. They can be private or public; public by a notary and private by the parties interested sealing the document itself, and there are so many witnesses.

Q. State how a public will is executed in Cuba before a notary, and state whether or not the person executing the will and the witnesses to it subscribe it themselves.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify to the facts inquired about.

A. They do not.

Q. State how they do it.

To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify to the facts inquired about.

A. They go before a notary and state the substance of the kind of instrument that they desire drawn. If they have any sort of real or personal property they hand him an inventory of it, and the legal part of the instrument is drawn by the notary, who signs it.

Q. And certifies to the presence of the witnesses?

166 To which question defendant objects, on the ground that same is irrelevant, immaterial and incompetent, and seeks evidence not the best evidence, and because

it is not shown that the witness is competent to testify to the facts inquired about.

A. Yes, to the presence of the witnesses.

Q. But the witnesses do not sign, neither does the party who makes the will sign it?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify as to the facts inquired about.

A. No sir.

Q. Are the wills which you have found in the archives in Cuba, in your professional business, generally public or private?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify to the facts inquired about.

A. There are four or five kinds. That is to say, the notary public doesn't keep any instrument more than thirty years; after that they go to the general archives and there are filed; a copy of which can be asked—

Q. (Interrupting) Well, what I want to get at is, as a general proposition, whether wills are mostly public or mostly private.

A. Mostly public.

Cross-Examined.

By Mr. Cooper:

Q. Have you any interest in this suit or the result of it?

A. No sir, none at all.

167 Q. Have you any interest in the lands involved in this suit?

A. None at all.

Q. Have you ever had?

A. I have had, yes sir.

Q. How long ago is it since you have had any interest in this claim or in these lands?

A. Oh, 1889.

Q. Have you been employed or are you employed now in any way in connection with this case, or these claims?

A. No, I am not employed now in them at all.

Q. Have you been?

A. I have.

Q. How long since you have had any employment in investigating these claims or prosecuting them, Mr. Sariol?

A. Last March a year ago.

Q. By whom were you employed then and what were you employed to do?

A. Just to help in gathering up powers and contracts.

Q. By whom?

A. By Mr. J. H. Jones.

Q. What was the nature of your employment and your compensation?

A. The knowledge of being familiarly acquainted with the heirs, knowing them very well.

Q. Well, what were you to do, and what was your compensation? was the question.

A. Well, I was to introduce Mr. Jones to several parties that I knew, the heirs, the surviving heirs.

Q. The question I asked was, what was your compensation?

A. My compensation was only just expenses.

Q. When was this?

A. March, a year ago.

Q. Where are you residing now?

A. Washington, D. C.

Q. Are you here on this business?

A. Yes sir.

Q. What is your compensation for this examination, or this part of the prosecution of this case?

A. I have made no arrangement at all.

168 Q. You have no arragnement made with regard to that?

A. No.

Q. You expect to have?

A. I might.

Q. Did you come to Florida in reference to this claim?

A. Oh, I passed through Florida. I heard about this case and stopped on my way to Cuba.

Q. How did you hear about the case, and what occasioned your stopping here?

A. Through correspondence.

Q. At whose request?

A. Mr. Jones'.

Q. Are you related to any of the parties to this suit?

A. No sir.

Q. By blood or by marriage?

A. No sir.

Q. Where were you born?

A. I was born in the City of Puerto Principe, Island of Cuba.

Q. During what years did you live in Cuba?

A. In my childhood and after I come from school.

Q. Please give as nearly as you can, what years that covers.

A. That covers since I was born until I was about twelve years of age, and then about seven years in this country, and I returned back to Cuba.

A. How old were you when you came to this country, and how old were you when you went back to Cuba?

A. I was twelve when I came here, and I was about nineteen or twenty when I went back. I don't remember very well.

Q. Nineteen or twenty?

A. Yes sir.

Q. How long did you remain in Cuba after you returned?

A. Not very long. I traveled in Europe, and came back to this country, and was back here, during a portion of two years, was my absence from Cuba.

Q. How old were you when you left Cuba that time?

A. For school?

Q. You say you were away a portion of two years. How old were you when you left?

169 A. About fifteen, fourteen to fifteen.

Q. Then you returned when you were nineteen or twenty, when you returned to Cuba, you said?

A. Oh, that is a mistake. When I left home for school I was seven years at school; then after that I went back. I returned to Cuba when I was nineteen or twenty, and was absent again for about two years.

Q. Then you were about twenty-three when you came back to Cuba from traveling?

A. Yes sir.

Q. How long did you remain in Cuba after this return when you were twenty-three.

A. I left to go to Mexico. That I cannot tell you very well, how long I remained there, some months, I can't remember exactly, some months.

Q. Where did you go then?

A. Mexico.

Q. How long did you remain in Mexico?

A. Perhaps four or six weeks.

Q. Did you return from there to Cuba?

A. To Cuba again.

Q. Then how long did you remain in Cuba?

A. I was there, I suppose, another two years, and came to the United States for a few months and back again.

Q. Did you remain after that continuously in Cuba?

A. I did.

Q. How long, how many years?

A. That date I remember better; that is 1883.

Q. About how many years would you say you were there continuously?

A. I don't well remember. I know I was several years there.

Q. Several years before you finally left there?

A. Yes sir.

Q. When did you finally leave Cuba?

A. How is that?

Q. What year did you finally leave Cuba?

A. I have never finally left Cuba. In fact I visit there every year.

Q. I understood you in your direct testimony to
170 say that you had lived in Washington about sixteen years?

A. Yes sir.

Q. When did that residence begin, what year, do you remember?

A. '92.

Q. 1892?

A. Yes sir.

Q. Where has your residence been in these last sixteen years?

A. Washington.

Q. How much of your time is spent in Washington?

A. Nearly all the time, with the exception of frequent visits to Cuba.

Q. What business are you engaged in Washington?

A. In the national claims.

Q. Are you connected with any office?

A. I am sir.

Q. What office?

A. Nathaniel Wilson's.

Q. Can you give me your office address in Washington?

A. Pacific Building, 622 F Street, Northwest.

Q. How long have you been engaged in looking after claims?

A. Since 1883.

Q. Since 1883?

A. Yes sir.

Q. Were you engaged in that character of business in Cuba before you went to Washington?

A. I was.

Q. How old were you when you first began looking up such claims?

A. I was very young at that time.

Q. Can you give about what your age was?

A. About thirty, or thirty-two, between thirty and thirty-two.

Q. What business, if any, were you engaged in before that?

A. In brokerage.

Q. What sort of brokerage?

A. Well, it is hard to explain that, because there is nothing of the kind in this country. It is not a real estate
171 brokerage, like in this country; it is a brokerage especially for sugar crops.

Q. The brokerage you were engaged in was a brokerage specially for sugar crops?

A. Yes sir.

Q. Where were you residing? Where did you have your place of business while engaged in the brokerage?

A. In the City of Havana.

Q. As I understand you, you gave that up when you were about thirty?

A. No, I maintained for some time this business where I was.

Q. You began investigating claims when you were about thirty as I understand? Is that right?

A. That is about right.

Q. When did you make your first inquiries in reference to the heirs of Teresa Rodriguez?

A. I cannot give you the date.

Q. About the year?

A. About '85, the year before they gave me the power of attorney.

Q. Where were you then residing?

A. In Havana.

Q. Where did you make your first inquiries or investigation?

A. My first inquiry I made from St. Augustine.

Q. Where did you make your first investigation in Cuba if at all ?

A. In Cuba?

Counsel:

Yes.

A. Through one of the heirs and children of Teresa Rodriguez.

Q. I said where in Cuba?

A. In Havana.

Q. Which of the persons you have named in the history of the family submitted by you did you first have any communication with in reference to these heirs?

A. Who was it?

Q. Which of the persons I said?

A. Which person?

Counsel:

Yes.

A. Jose Quintin del Pozo y Marcos.

Q. Where and when was this?

A. In Havana and about the same year, '85.

172 Q. About 1885?

A. Yes.

Q. Which of the persons named in the list made by you, who are descendants or claim to be descendants of Teresa Rodriguez, did you ever know personally?

A. Bernabe, Simeon, Serafin, Ladislao, Bascilio, Enrique, Christina, and Maria del Pilar del Pozo y Marcos.

Q. Each of those persons have that last name, del Pozo y Marcos?

A. Yes, they are all by that mother.

Q. Are there any others that you can remember that you knew personally?

A. Yes sir, Felix Genaro y Marcos. These are all that I remember.

Q. Do you wish to refer to this paper to see if there are any others?

A. Yes, if you wish, (referring to paper or memoranda heretofore mentioned), there is another one, Teresa del Pozo y Marcos and Rosa del Pozo y Marcos. That is all.

Q. Where and when did you first meet these persons you have just named?

A. In Havana.

Q. When?

A. In 1885.

Q. All of them?

A. That is, for a family conference at the residence of Mr. Jose Quintin del Pozo y Marcos, who was their mentor and leader.

Q. Did you meet each and all of these persons at about the same time?

A. Yes sir.

Q. Had you known them prior to 1885, any of them?

A. I did not, sir, no sir.

Q. At the occasion of your first meeting with or conferring with them, did you look them up to ascertain their interests, if any, in this claim?

A. I did, sir.

Q. Is that the history of the beginning of this

173 matter?

A. In the beginning I was in this law office in

Havana, where I heard there were heirs to certain Florida lands, and I looked them up.

Q. Will you please give the ages and appearance of each of these persons when you first met them, as nearly as you can?

A. That I am afraid I wouldn't be able to say. The men are of mature age, and somewhere away beyond fifty. Three were lawyers, and so forth, but as to their ages, I don't remember.

Q. State, as to each of them, as nearly as you can, by name, what you would say from his or her appearance was the then age, if you can, in detail.

A. Well, they were so well provided in their appearance in life, you would hardly know what age to assign to each one of them, but we have here the documents of some of them, when they were born.

Q. That is not the question asked you.

A. I suppose Mr. Jose Quintin del Pozo, from his appearance at that time, was about sixty years, Simeon about sixty-two; Basilio about fifty-five; Teresa about fifty; Enrigue, (he was the youngest) he was about thirty-five. And I don't hardly recollect the countenances of the others. I met them all at the residence of Mr. Quintin del Pozo.

Q. Which of these persons did you meet with on that business after the first conference to which you have referred?

A. What, sir?

Q. Which of these persons did you ever meet or converse with again in reference to this claim, after this conference in 1885 to which you have referred?

A. Which of these persons?

Counsel:
Yes.

A. After that conference?

Counsel:
Yes.

A. Why, Mr. Jose Quintin del Pozo.

Q. Who else?

A. Enrique. Those two I transacted the business
174 with, in behalf of the brothers and sisters.

Q. The others you don't remember meeting so much?

A. No sir. I used to meet them in the street there.

Q. I meant in reference to the discussion of this claim.

A. Oh, no, only those two.

Q. In reference to the discussion of this claim?

A. Yes sir.

Q. The others you met only casually?

A. Yes sir.

Q. The only discussions you had in reference to this claim, after that first interview, I understand, were with the two that you have named?

A. Correct.

Q. Are any of the persons you have named as claiming to be the heirs of Teresa Rodriguez still living, whom you personally know?

A. No, sir, they are dead.

Q. You have no personal acquaintance with those who are now living, who claim to be heirs, as I understand you?

A. Personally, no. I only just by sight know them.

Q. Will you please state in what business, if any, these persons were engaged, whom you met in 1885, claiming to be the heirs of Teresa Rodriguez, and where?

A. They were lawyers—

Q. I mean each one by name, as well as you can remember.

A. Jose Quintin del Pozo was a lawyer. Bascilio was a clergyman.

Q. The question is, where were they?

A. They all resided in Havana, all lived in one house, every one of them.

Q. Bascilio was a clergyman?

A. Yes, a clergyman—no, pardon me—Serafin was a clergyman. Bascilio and Enrique were government employees. Simeon was a proprietor. And the women, of course, I don't know about them, I suppose domestic.

Q. Were either or any of these persons married at that time?

A. Nearly all of those I have named, with the exception of Enrique del Pozo, Teresa and Maria del Pozo.

175 Q. Do you remember any of the rest of them who were married?

A. Who were married?

Q. Yes, at that time.

A. Maria del Pilar and Teresa were married.

Q. Which of the persons, if any, named by you as claiming to be heirs of Teresa Rodriguez, whom you personally know, are now living?

A. Well, personally I know all of them, as I have come in contact with them lately, but of course I am only acquainted with them lately.

Q. What do you mean by "lately."

A. March a year ago.

Q. You never knew those persons before last March, to whom you refer?

A. No, sir.

Q. Which of these persons did you meet last March a year ago? Can you name them?

A. I can name them by the heads of families.

Q. Refer to the paper and give the names of each person that you saw personally.

A. (Referring to paper or memoranda heretofore referred to.) Esteban Garcia y Pechardo; Louis Felipe Garcia y Pechardo; Alfonso Garcia y Alvasses; Ricardo Garcia y Orchandarena; Gertrudis Garcia y Orchandarena; Maria Teresa Garcia y Orchandarena; Maria Louisa Martinez y Pozo; Ernesto Nunez del Pozo. That's all.

Q. Had you ever met either of these persons you have just named before March a year ago?

A. Had I met them before?

Counsel:

Yes.

A. No, sir.

Q. You had no personal acquaintance with them prior to that?

A. Prior to that, no sir.

Q. Where were these persons residing at the time you met them in March a year ago?

A. In Havana, and outside of Havana, outside of the City of Havana.

Q. Can you give more definitely than that which were in Havana and the places where the others were on
176 the island?

A. The Orchandarenas, at Guires The rest of those lived all in Havana.

Q. The rest lived at Havana?

A. Yes.

Q. Can you give the business that these parties have engaged in that you have just named?

A. No sir, I cannot.

Q. How did you come to make the acquaintance of these persons in March a year ago?

A. By inquiry.

Q. You looked them up yourself?

A. I looked them up myself.

Q. The parties from whom you claim to have received powers of attorney are all dead, are they not?

A. Yes sir.

Q. How long were you engaged, March a year ago, in making these inquiries in reference to these parties claiming to be heirs of Teresa Rodriguez?

A. About a month or so, four or six weeks.

Q. Who was with you, if anyone, in making these inquiries?

A. Part of the time I was by myself and part of the time I was with Mr. Jones.

Q. Mr. J. H. Jones?

A. J. H. Jones.

Q. Did you go out of Havana at that time in making any of your inquiries?

A. I did, sir.

Q. Did you meet any of these persons out of Havana, or did you meet them all in Havana?

A. Met them all in Havana.

Q. When did you last see any of these parties?

A. About April a year ago.

Q. Were these persons living the last you knew of them?

A. Living at the present time?

Counsel:

Yes.

A. Yes, they are living.

Q. Where did you go outside of Havana, on the last trip, in making this investigation?

A. To Jaruco.

Q. In the island of Cuba?

177 A. Yes sir, Province of Havana.

Q. How far is it from Havana?

A. Oh, about an hour and a half ride.

Q. Is that the only place that you went out of Havana in making that investigation?

A. Yes sir.

Q. Did you examine any parish records in March a year ago?

A. I did not, sir. They had one in the family.

Q. I didn't ask what they had in the family. I ask if you examined any parish records yourself.

A. This time I did not.

Q. When did you ever make any examination of the parish records in reference to these claims, the parties claiming to be the heirs of Teresa Rodriguez?

A. When did I?

Q. Yes, what year?

A. During '85 and '86.

Q. Where were you residing then?

A. In Havana.

Q. These records as I understand, are all in existence, except one church that has been burned, as far as you know?

A. As far as I know, yes sir.

Q. What were the parishes that you actually examined records in, and in what places?

A. Well, in Havana, in Ceiba Mocha; Guanabacoa; Regala Jesu del Monte.

Q. How far from Havana are these parish records?

A. Fifteen to twenty miles, the first one, and the others are within the circuit of the City of Havana.

Q. Where is this church that you say has been burned?

A. In the City of Bayamo, Province of Santiago de Cuba.

Q. As I understand it, you never examined the records in that church yourself?

A. I did not, not in that church.

When you made this last inquiry, in March a

178 year ago, were any of the persons living of whom you made your first inquiries, in '85.

A. No sir.

Q. Were you under employment to do this work when you were making this last inquiry?

A. I was employed by Mr. Jones, yes sir.

Q. Will you please give me the names of the female members of the family that you met in 1885, and which of them were married, and the names of the married women?

A. Well, Christina del Pozo was the only married one.

Q. Who did she marry?

A. I believe she married Alejandro Nunez. I am not sure about that.

Q. Give the other females, if you can remember their names, and who they were married to, if at all.

A. Maria del Pilar. I don't remember who she married.

Q. Was she married at that time?

A. I think she was, but I don't remember who.

Q. Who were the other females that you remember, at that time, and who did they marry?

A. Rosa was another female, but I don't remember if she was married. I know all that were married their husbands joined the power.

Q. Did you ever have any connection with Shalley & Martin, of Washington, with reference to this thing?

A. No sir.

Q. Were you connected with any one in the United States in reference to this claim?

A. I was.

Q. Who?

A. Mr. W. W. Dewhurst at one time, and Mr. Butt at Orlando.

Q. Was Mr. Butt's connection with it after Mr. Dewhurst's?

A. Yes sir.

Q. What terminated your connection with it?

179 A. Because I could not get a patent from the land office.

Q. You mean did you drop it, or did your powers expire?

A. No sir, I dropped it.

Q. As I understand you have no present interest in or connection with these plaintiffs or this litigation?

A. None whatever, sir.

Re-Direct Examination by Mr. Dewhurst.

Q. Please state the business of Mr. Nathaniel Wilson, in whose office you state that you were employed.

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. He is a lawyer, attorney at law, and, more than anything else, international law.

Q. Is he representing Spanish claims before the Spanish Claim Commission?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. He is.

Q. You have stated in your cross-examination that you did 't personally examine only certain church records. State whether or not the powers of attorney which you received from the persons you have mentioned as claiming the Teresa Rodriguez grant in Florida contained recitations of births, deaths and marriages, other than those contained in the church records which you did examine?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. They contained such recitations.

Q. Did they not contain such church records at
180 considerable length and detail?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Very much, sir.

Q. Mr. Sariol, you stated, I think, that you were in Florida on this business, and then afterwards I think you stated that you were going through to Havana. Will you state which is the statement you desire to go upon the record?

A. I was on my way to Havana.
Q. And Mr. Jones stopped you?
A. Yes sir.

It was here admitted by defendant's solicitors that all of the records of the United States Court then in existence at Jacksonville were burned, about April 1891.

The complainants' solicitor here asks that the Master make an order in this cause directing that the taking of testimony herein be continued at Tallahassee on Tuesday, December 1st, 1908, and states that he desires to take the testimony of the comptroller of the State of Florida as to the contents of certain official records in his office, which the comptroller has refused to allow to be brought out of Tallahassee for examination.

Defendant's solicitors object to the taking of testimony in Tallahassee, on the ground that the examiner has no power to take testimony out of this district.

Whereupon the hearing was adjourned, to be continued at Tallahassee, Florida, Tuesday, December 1st, 1908.

181 Hearing resumed at Tallahassee, Florida, in the office of the comptroller of the State of Florida, on Tuesday, December 1st, 1908.

Present, W. W. Dewhurst, Esq., of counsel for the complainants; J. C. Cooper, Esq., of counsel for the defendant; and the Special Master.

And at this point counsel for the defendant renewed his objection to the taking of such testimohy at Tallahassee, as follows:

Defendant's solicitor here notes that he objects to the taking of this testimony, on the ground that the Special Master has no authority to take any testimony in Tallahassee, Florida.

And thereupon one WILLIAM M. McINTOSH was duly sworn as a witness for the complainants, and testified as follows:

Direct Examination by Mr. Dewhurst.

Q. What is your name?

A. William McIntosh.

Q. Is your residence Tallahassee?

A. Yes sir, I am chief clerk in the comptroller's office of the State of Florida, Tallahassee, Florida.

Q. How long have you been chief clerk in that office?

A. I have been in the office over thirty years. I have been chief clerk after my father's death.

Q. How long have you been in the office?

A. Over thirty years. My father was chief clerk up to the time of his death.

Q. How long have you been chief clerk, approximately?

A. Let's see—about five years.

Q. Please state if the comptroller's office contains the duplicate tax rolls for the several counties in the State of Florida?

To which question defendant objects, on the ground that whether such duplicate tax rolls were required to be made a matter of record in the comptroller's office is a ques-
182 tion of law, and because it seeks evidence not the best evidence, and that the witness is not competent to testify upon this point, except as to what may have been filed during his personal connection with the office.

A. The law requires that they shall be filed here from time to time. I couldn't say that the duplicate tax rolls for every county for every year are here in the office now.

Q. In other words, some of the early tax rolls are not to be found?

A. There may be some of the later ones that are not. I don't know.

Q. State whether or not you have made a search in the duplicate tax rolls of Orange County from the years 1845 to 1851 inclusive, and if so state what you found.

A. I have, and found the duplicate tax rolls of 1845 to

1851 inclusive, except for the year 1847, which I could not find.

Q. State if these rolls which you have found are of the official records of the office of the comptroller.

To which question defendant objects, on the ground that whether such tax rolls are official records is a question of law, and because it seeks evidence not the best evidence, and because the witness is not competent to testify upon this point.

A. The rolls presented have been to my certain knowledge on file in this office for thirty years.

Q. (Handing witness document). I ask you to state what that document is.

A. The book presented contains the following certificate: "State of Florida, Orange County, ss. I, Wm. B. Fail, assessor of taxes in and for the county and state aforesaid, do certify that the within assessment is correct, so far as my knowledge extends. This 1st day of October, 1845. (Signed)
183 William B. Fail, assessor of taxes."

Q. Will you state what the document is?

A. I have given you what the assessors said.

Q. I know, but is it not the duplicate tax roll of the County of Orange?

To which question defendant objects, on the ground that the witness cannot testify whether it is a duplicate of the tax roll of Orange County or not.

A. I have confined myself strictly to identification of the book by the assessor's certificate.

Q. I ask you whether or not it is the tax roll of Orange County for the year 1845.

A. I am unable to add anything more to the identity of the book than the certificate above quoted. That is all.

Q. Please examine the book and state how the several assessments have been made.

To which question defendant objects, on the ground that it seeks evidence that is irrelevant, incompetent and not the best evidence, and that the record itself is the only competent evidence of the mode in which the record is made up.

A. The best evidence I can give of how the assessments have been made is to submit the book. You can examine the book and make a transcript of it or a copy of it if you want to. I couldn't determine whether that book was made in accordance with law or not.

Q. Have the names of the several individuals whose property has been assessed been entered in this book in alphabetical order?

To which question defendant objects, on the ground that same is irrelevant and incompetent, and because the book itself is the best evidence of the mode of making up the assessment, and there is no sufficient predicate laid for the intro-
184 duction of this class of testimony.

A. (Examining book in question) So far as I can see, to the extent of the first letter in the sur-names, they are alphabetical. The book is not alphabetically arranged, however, except to that extent.

Q. Has the real estate assessed against the several individuals been entered upon the several pages by some manner of description?

To which question defendant objects, on the ground that same is immaterial, and seeks evidence not the best evidence.

A. Under the head of "first rate land, three-quarters of a cent per acre," the number of acres are given, and under the heading of "second rate land, one-half cent per acre," the number of acres is given, and under the heading of "third rate land, one-quarter of a cent per acre," the number of acres is given, but there is no description of the land.

Q. In all cases? Aren't they entered up in nearly every case like this? (Pointing to particular entry) I haven't found any but what has got some description.

A. But there is no description of land, except in certain cases of local description such as might enable parties who were familiar with the land to locate it.

Q. How many pages does the book contain, beginning with A and ending at Z?

To which question defendant objects, on the ground that

same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Fifteen pages, that is, fifteen pages that have been used. There are several blank pages.

Q. Then there are fifteen pages of the book which contain the names of persons assessed and descriptions of property?

185 To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and is leading, and because the witness has already stated as to the facts inquired about.

A. I have already answered the nature of the descriptions contained in the book, and have stated that the land is not described by legal descriptions.

Q. But the number of pages contained in the book which cover all the assessments there is fifteen, is it not?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. The number of pages occupied, I said, in the book, in other words, the number of pages written on, number fifteen.

Q. Please examine the book, and state whether or not there is any property assessed as owned by Teresa Rodriguez, and the heirs of Teresa Rodriguez.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the fact that no such name may be found in said book does not establish that the land involved in this suit was not assessed in Orange County in the year 1845, and because this examination is in every respect incompetent.

A. (Examining the book in question) So far as the question of whether any lands are entered there opposite the name of Teresa Rodriguez is concerned, I will say that I am unable to find that particular name. But I will state further that it is impossible for me to declare that the property of Teresa

Rodriguez is not assessed, for the reason that property is entered on this book, following after the word "same,"
186 in a number of instances, and for that reason I don't know who "same" was intended to be. In a number of instances "same," "same," appears there, and "ditto." In making the ditto they used two ditto marks.

Q. Whenever the word "same" appears, or ditto appears does not some name, the name of some person, immediately precede it?

To which question defendant objects, on the ground that same is immaterial, irrelevant and seeks evidence not the best evidence, and on the additional ground that the fact that such name or names may appear in the book prior to the word "same," would not indicate that the word "same" referred to such name or names.

A. Wherever the word "same" appears, a name immediately precedes it, but where the ditto marks, (or dots, the intention of which I do not know), just preceding those, no name appears.

Q. Is not the word "same" immediately over the dots or ditto mark, in the case you speak of?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and on the additional ground that the fact, if it is true, that the word "same" appears over the said ditto marks, would not indicate anything as to whom any land was intended to be assessed to.

Q. [A.] I don't know that that is the only case, (referring to particular entry pointed out), and that may be "Sam" for all I know.

Q. Please look under the letter R and state what the names of all persons whose names begin with R, that appear upon this roll.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the Court could judge of the value

of this record only by an inspection of the record itself, in the condition in which the entries are made as testified to.

187 A. I said that there was the word "same" and ditto marks here, and after at least one name the words "and others," appears. I wish to add that as to the assessment of persons, that I find that property is assessed on one page to "Heriot and others."

Q. Please read the description of the lands assessed to "Heriot and others," as it appears on that book.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. I am unable to say, (pointing to entry), whether that is "1871" or "1771," (it looks like it was changed), "acres of land, second rate land, at one-half cent per acre.

Q. Don't this follow it? (Pointing to entry in book in question). Doesn't a description of land follow?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Those notations there are under the headings of—I will have to give the headings that are on top. Under the headings of "slaves," and "free men of color," and—

Counsel:

There is no use in taking up time with that. I asked you this question—

The Witness:

I will have to give all these headings that the entry appears under, then I will give the words that are under them, but I can't give you, as a real estate assessment—

Counsel:

I simply ask you what words appear against that name. (Pointing to a name entered in said book).

A. That is under headings, and I have got to give the headings. I gave the headings, in the beginning, over the number of acres, and I have got to give all those headings,
188 every one of them. I want to settle the question for you, gentlemen, right now, I want to give the testimony impartially as it appears on that book.

Last question read to witness at the request of counsel.

A. My answer is that under the following headings, (I'll give the headings). "Slaves, 37 1/2 cents each; free men of color between 21 and 60 years at $3.00; improved town lots 10 cents on the hundred dollars; cattle of residence over 100 head 1/2 cent each; cattle of non-residence 1/2 cent each; moneys loaned at interest 20 cents on the one hundred dollars; stock in banks and other corporations 20 cents on the hundred dollars; bank agencies and insurance companies, $150.00 each. ("I suppose that is intended for a dollar and a half, it is $150" each.) "Merchants, stock in trade, 20 cents on the hundred dollars; commission merchants and factors, 1/2 per cent on commissions received; retailers of spirituous and vinous liquors $30.00." Under the headings as above stated the following words appear: "Halifax River, E., by said river, S. by lands of Sam'l Williams, W." That is under the headings I have given. And under the headings of dollars and cents, following along on the same line, nine dollars and thirty-five and one-half cents appears, is the whole line, so far as I know.

Q. Then against the only entry in the book in which you find the words "and others" is a description of land on the Halifax River, is it not?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because it is not shown that the witness is competent to testify to the fact inquired about.

189 The Witness:

I object to answering that question myself, because I am not able to answer that. I state that I cannot say of my own knowledge or by the description entered on the book that the land is on the Halifax River. I have already read the description of that land, and that is the best testimony I can give in the premises.

Q. Please examine this roll, (referring to same document heretofore presented to the witness), and read therefrom the names of all persons appearing on the said roll whose names begin with the letter R.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because the law did not require the names of tax payers or owners of lands to be entered in any particular order.

Mr. Dewhurst:
I will amend the question.

Q. Please examine the roll and read therefrom the names of all persons beginning with the letter R, who appear to have been assessed as the owners of property.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because the law in force in 1845 did not require such assessment, and because it is not shown that this record is the record of the assessment under which the sale in dispute was made, or that this is the only tax book for that year, or a duplicate of same, in existence in the year 1845, or in the years from 1845 to 1852 inclusive.

A. On one page of the assessment roll, below the names "Palms, George and Oliver," and above the name "Spier, A. S.," appear the names reading, "Read, Wm. M., Rackliff, Geo." That is an answer to your question, so far as I
190 can answer it.

Q. State whether or not any lands appear to be assessed in that roll for taxes except those lands that are assessed against the name of some individual.

To which question defendant objects, on the ground that same is irrelevant and immaterial and seeks evidence not the best evidence, and because the law in force in 1845 did not require such assessment, and because it is not shown that this record of assessment is the record under which the sale in dispute was made, or that this is the only tax book for that year.

or a duplicate of same, in existence in the year 1845, or in the years from 1845 to 1851 inclusive, and because it does not appear that the headings on this roll required such descriptions of land to be so entered.

A. In answer to that question I will say that there are lands entered on this book not opposite the name of any individual.

Q. Please state whether or not there appears on that book any assessment of the grant to Teresa Rodriguez, either assessed to Teresa Rodriguez or her heirs, as owner, or assessed as Section 37, Township 19, Range 28, and Section 41, Township 19, Range 29.

To which question defendant objects, on the ground that same is irrelevant and immaterial and seeks evidence not the best evidence, and because not finding such land upon this book would not establish that the lands were not assessed in Orange County during the year 1845 on some record, and that said book does not give printed forms thereon under which to enter descriptions of land, but the lands are assessed therein by acreage only, and because it does not appear that the witness has had such opportunity to examine the descriptions of
191 land in said book as to be able or competent to testify in relation thereto.

A. I will state that I am unable to find the name of Teresa Rodriguez, but I cannot say that land is not assessed on that book to the heirs of Rodriguez, as I am not familiar with the heirs, and do not know their names, and have no knowledge whatever of the character or description of the land in controversy; and further that the assessment roll, as previously stated, does not contain any provision whatever for the descriptions of lands, nor does any real description of land appear on the book, by section, township and range.

Q. Is it not a fact that there are no lands appearing on this roll assessed and described by section, township and range?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. I have already answered that question in the answer to the preceding question.

Q. You have stated that you couldn't answer whether there was any assessment to the heirs of Teresa Rodriguez; does the roll contain any entry of lands assessed, under the head of "names," "The heirs of Teresa Rodriguez"?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the witness has heretofore answered this question.

A. I have already answered that question by stating that I couldn't say whether or not there was any land assessed to the heirs of Teresa Rodriguez, because the land may be assessed in the names of the individual heirs, and I do not know who they are.

Q. My question was not whether the land was assessed to an individual heir, but whether it was assessed in the name, using the words, "The heirs of Teresa Rodriguez."

192 To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because the witness has heretofore answered this question.

A. (Further examining document in question) I cannot find the words "heirs of Teresa Rodriguez" under the head of "names" in this book.

Q. (Handing witness another document.) State what that document is.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and incompetent, and seeks evidence not the best evidence, and because the witness is not competent or qualified to testify to the record.

A. That paper (pointing to detached paper with the document just handed witness by counsel), was a part of this book. There, (pointing), is the wax seal where it fell off. I don't know what this paper is. I will look and see. The book in my hands contains the following certificate: State of Florida,

County of Orange, ss. I, Constant Potter, tax assessor for the county and state aforesaid, do hereby certify that the foregoing is a true assessment of all the property, so far as my knowledge extends. Given under my hand this 4th day of March, A. D. 1846. (Signed) Constant Potter, tax assessor.'" Marked "Triplicate."

Q. State whether or not that is one of the official records of the comptroller's office.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and that the witness is not competent to testify, and that the question seeks a legal opinion.

193 A. It is an official record of the comptroller's office so far as the fact that it has been filed here for years will make it such, but there is no file mark on the book to show that it was ever filed officially.

Q. State whether or not the general character of the make-up of the book is similar to the tax roll of 1845, about which you have previously testified, approximately.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because it seeks the opinion of the witness on matter that could only be determined by comparison of the two books by the Court.

A. It is not. It varies in many particulars from the book of 1845.

Q. Upon each page of the roll is there a heading with the word "Names"?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. There are six pages in the book, and each has the word "Names" at the head of the column on the left or outer edge of the book.

Q. How many of those six pages contain writing?

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence, and because it is not shown that this book ever was an official record, or is the record from which the sale in question was made.

A. It appears that part of five pages have been written on.

Q. Under the column "names" state how the several names therein appear, whether alphabetically or not.

194 To which question defendant objects, on the ground that the same is immaterial and irrelevant and seeks evidence not the best evidence, and because it seeks the opinion of the witness.

A. The names appear to be arranged alphabetically, in so far as relates to the first letter of the sur-name, and with the exception that the word "same" appears among the names, and under the head of "names" in several instances.

Q. After the names beginning with the letter, P and before the names beginning with the letter S, please read from that roll the names of all persons therein beginning with R.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. (Reading from record). "Read, Wm.—" I'll have to draw a picture of that letter, there, I can't make out that letter, what it is. (Pointing to character following the words "Read, Wm.) "Radcliff, Geo., Rose Chas. Rose, Alex. R., Reily, Jno." I don't know what this other name is. I can go as far as "R-o-d-g" ,and then there are some other letters following, and then this "Joseph." And the next one is Rogers, Patrick, Reynolds, Wm. Rushing, Jno. G.," (or "P", I can't tell which.)

Q. Is not the Christian name of the name you said you could not make out, Joseph?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Yes I said that. In the sur-name I gave the first four letters, and followed it by the Christian name.

Q. State whether or not, the name, the first four letters of which you have given, "R-o-d-g", appears to be Rogers".

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

195

A. I have already answered that I am unable to say. From the best of my belief, though, I would say that was not the case.

Q. Please examine the roll and state whether or not, under the column "names", there appears the name of Teresa Rodriguez.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because whether or not such name appears on this book cannot affect the sale for taxes involved in this suit, and would not establish that such name or this land was not assessed in Orange County.

A. I cannot answer that question, for the reason that there are several names that I am unable to make out. Some of them are torn clear through, and I cannot make them out, or rotted out. Some names are rotted clear out there. (Pointing).

Q. Is any portion of the sheet containing the names beginning with "R" rotted out?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Yes sir.

Q. Describe what portion of it.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. The lower portion.

Q. Containing what names, containing the names beginning with what letter?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. The name preceding the defect in the book is "Walker, A. W.", and then in another place it is "Pallicer, L. F.", and the next is "Kingsley, Geo.", and then—now, gentlemen, I don't want to pronounce this name: I'll try and spell it for you: "D-e-f-u-g-r-e-r-i-e-s, heirs of."

196

Q. Is there any break in the sheet in that portion of the sheet upon which are written the names beginning with R?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and seeks evidence not the best evidence.

A. I have already answered that question by giving the names appearing between the letter P and the letter S.

Q. Will you please answer specifically and directly the question is there any break in the sheet in that portion of the sheet upon which are written the names beginning with R?

To which question defendant objects, on the ground that same is irrelevant and immaterial and seeks evidence not the best evidence.

A. I am answering it now. I will answer it if you wish. If I could not have read the names I would certainly have so indicated at the time.

Q. You have not answered my question. Please answer that question directly.

A. I decline to answer any further than that, sir.

Q. Is it not a fact that the sheet, beginning with the name "Wm. Read" and ending with the name "John P. Rushing", which immediately precedes the name of John D. Sheldon, is complete and intact?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. Is what?

Q. My question is, is it not a fact that the sheet, beginning with the name, "Wm. Read" and ending with the
197 name "John P. Rushing", immediately preceding the name "John D. Shelton," is complete and intact?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. I have answered that question twice before, sir. If you want me to answer it further I will state that that sheet is not intact, because it is torn.

Q. In what portion of the sheet is the tear?

To which question defendant objects, on the ground that same is immaterial and irrelevant.

A. It is torn and faded under a heading that I am unable to make out, about the center of the book.

Q. Is it not a fact that the fading and tear appears in the middle of the sheet, while the list of names beginning with R is on the left hand margin?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. The page in question is faded and torn at the top, in the center of the page, and at the bottom, under the heading of "Names", on the left hand side of the sheet.

Q. Is not the left hand side of the sheet, containing the names beginning with R, S, T, and V, and the first part of the names beginning with W, so complete and intact that each name can be read?

To which question defendant objects, on the ground that

same is immaterial and irrelevant, and seeks evidence not the best evidence, and seeks the opinion of the witness.

A. In answer to that question I will say that it was on that page I was unable to make out the name of one
198 party, but that was not due to a defect in the book.

Counsel:

You haven't answered my question.

The Witness:

I have answered it. It was not due to a defect in the book, but it was on that page that I was unable to make out the name of a party. I will add, further, that it was not due to a defect in the book.

(Last question read to witness at request of counsel.)

A. I have already answered that question in so far as it lies in my power to do so.

Q. (Handing witness document). Please examine this and state what it is.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the witness is not shown to be qualified to testify as to what the book is, and that the book in question is not shown to be the record from which was made the sale involved in this suit.

A. The book in my hands contains the following certificate: "State of Florida, Orange County. I, Virgil R. Dupont, tax assessor and collector for the county and state aforesaid, do certify that the above is a true assessment of all the property in said county, so far as my knowledge extends. Given under my hand this the 22nd day of March, A. D. 1848. (Signed) Virgil R. Dupont, tax assessor and collector for the County of Ora—" balance obliterated.

Q. State whether or not you have made a search for the tax roll of Orange County for the year 1847, have made a search in the office of the comptroller for the tax roll of Or-

ange County for the year 1847, and if so, the result of such search.

To which question defendant objects, on the ground that same is immaterial and irrelevant.

199 A. I have made search for a book that would contain an assessment of the property of Orange County for 1847, but have been unable to find same.

Q. State the title which appears upon the cover of the book just handed you.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. "Orange County Assessment Book, 1848."

Q. Please state how many pages there are therein upon which assessments against persons or lands appear to have been made.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and seeks the conclusion of the witness.

A. (Examining document in question). Six pages.

Q. State whether or not the assessments made upon persons and lands have been entered in this book in alphabetical order, as to the names of persons against whom taxes have been assessed.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and seeks the opinion of the witness, and because the witness is not shown to be competent or qualified to give such opinion.

A. In answer to that question I desire to state that this book is so mutilated or destroyed by age that I am unable to arrive at any conclusion as to how the lands were assessed therein.

Q. Please read from that book the names of all persons

beginning with R, which follow the names of persons beginning with P, and precede the names of persons beginning with S.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because, from the witness' statement, the book is in such condition that no competent evidence can be given from it.

A. I am unable to give the names that are entered between the letter P and the letter S, for the reason that by decay they have become so dim and stained that I am unable to make them out.

Q. Please read the Christian names of all those persons whose names begin with R, whose sur-names you are unable to give.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because, from the witness' statement, the book is in such condition that no competent evidence can be given from it.

A. It is impossible for me to state definitely and specifically what the Christian names of those parties are. The letters are obscure therein. Some of the names I could make out and some I could not.

Q. Is not the first name on the list "Charles Rose"?

To which question defendant objects, on the ground that same is immaterial and irrelevant and leading, and seeks evidence not the best evidence.

The Witness:

I decline to answer the question.

Q. Is not the second name on the list "Alexander Rose"?

To which question defendant objects, on the ground that same is immaterial, irrelevant and leading, and seeks evidence not the best evidence.

The Witness:

I decline to answer the question.

Q. Is not the third name on the list "Rockhill" and Robert Pollard"?

To which question defendant objects, on the ground that same is immaterial and irrelevant and leading.

201 A. I decline to state, for the reason I have already given. I am not able to determine.

Q. Is not the fourth name there, "John Robinson"?

To which question defendant objects, on the ground that same is immaterial, irrelevant and leading.

A. I decline to state, for the same reason.

Q. Is not the fifth name on the list "Patrick Rogers"?

To which question defendant objects, on the ground that same is immaterial, irrelevant and leading.

A. I decline to state for the same reason.

Q. Is not the sixth name on the list "Col. O. L. Read"?

To which question defendant objects, on the ground that same is immaterial, irrelevant and leading.

A. I decline to answer for the same reason.

Q. Is not the name immediately following "Col. O. L. Read", with a break of six lines vacant, "Thomas Stamps"?

To which question defendant objects, on the ground that same is immaterial and irrelevant and leading, and because the condition of the book is such that no competent evidence can be given of it or from it.

A. I cannot answer, for the reason that the book is so stained by age that I cannot determine definitely what the surname is.

Q. (Handing witness another document.) I ask you to

state what that document is. I refer to the title of the document which appears upon the cover.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. "Orange County Assessment Book, 1849," is written on the cover of the book.

202 Q. Please read the certificate attached to the book.

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and seeks evidence not the best evidence.

A. The following certificate appears on the book: "State of Florida, Orange County. I do hereby certify the foregoing to be a true and correct list of all the taxable property in said county that has come to my knowledge, and the amount of state taxes assessed thereon for the year 1849. I do further certify that the above amount of assessment of state taxes corresponds with the amount contained in the book filed by me in the office of the Judge of Probate. (Signed) Virgil R. Dupont, tax assessor and collector of Orange County, 15th April, 1849."

Q. Please state how many pages there are therein on which appear the names of persons assessed for taxes or property assessed for taxes.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because it does not appear that this is the book or record from which the sale involved in this suit was made, or a copy of the same.

A. Six pages.

Q. Is the heading of the left hand column of each page the word "Names"?

To which question defendant objects, on the ground that same is immaterial, irrelevant and leading, and seeks evidence not the best evidence.

A. The word "Names" appears at the head of the left hand column on each page.

Q. State whether or not the names of persons assessed for taxes have been entered alphabetically in this roll.

203 To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because it seeks the opinion of the witness, and is incompetent.

A. The names appear to be arranged alphabetically, in so far as relates to the first letter of the sur-name, except that in several instances the word "also" appears opposite the acreage of land, under the heading of "Names".

Q. Please read from the roll the names of all persons appearing thereon beginning with the letter R, which follow the names beginning with the letter P and precede the names beginning with the letter S.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and is incompetent.

A. (Reading from document in question) "Rose, Alexander; Rose, Charles; Robinson, John; Rees, Col. T. O. and T. H. Williams; Rush, and Mulenburgh; Rockhill and R. Poland; Reins, Cornelius." And I want to add just here that the alphabetical arrangement seems to have been disturbed in the assessment of property to T. H. Williams, to Mulenburgh and to Poland, in connection with the names beginning with R. And for this reason I desire to qualify my statement to that extent as to other assessments that may be made in the book.

Q. Please look under the heading "Names", beginning with the letter A and continuing to the end of all names which have been entered in the book, and state whether or not the name of Teresa Rodriguez appears therein.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and is incompetent.

A. (Examining book in question). I do not find
204 the name of Teresa Rodriguez.

Q. (Handing witness another document). State the title of that, Mr. McIntosh.

To which question defendant objects, on the ground that same is immaterial, irrelevant and incompetent.

The hearing was adjourned to Wednesday at nine A. M.

Wednesday, nine o'clock A. M., hearing resumed.

And the same witness, WILLIAM M. McINTOSH, further testified as follows:

Direct Examination.

A. The title of the document handed me yesterday, on the front of the book, appears, "Orange County Revenue Assessment for 1850, $667.57. Deld. Jno. Simpson, June 5, 1850."

Q. Please state the certificate attached to that book.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and is incompetent.

A. The certificate attached to the book is in words and figures as follows: "County of Orange. I do hereby certify that the foregoing is a true and correct list and assessment of all the taxable property and subjects within the said county that have come to my knowledge, and that the amount of state taxes assessed thereon by me in the year 1850 is the sum of $667.58 (six hundred and sixty-seven and 58/100 dollars." I do further certify that the foregoing assessment of state taxes corresponds exactly with that contained in the book filed by me in the office of the Judge of Probates, and that retained by me. (Signed) John Simpson, Tax Assessor and Collector." It is marked, "Dated this 24th day of April, A. D. 1850.

Q. Please state how many pages are occupied
205 with the subjects and property assessed for taxes in that book.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. Four pages.

Q. State whether the names of the subjects and owners of lands assessed therein have been entered in the book alphabetically.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and seeks the opinion of the witness and because it is not shown that the witness is qualified to answer as to the subjects or ownership of lands on the book.

A. I am unable to state whether or not the names of the owners of any lands are entered on the book, but under the heading of "Names" appear certain names, arranged alphabetically in so far as relates to the first letter in the surname, and also the word "do" appears in a number of instances in lieu of some names, and also the word "do" and "Walker," "do" and "G. R.," and other instances where the word "do" appears followed by words such as "estate of."

Q. Please state whether or not the roll is in a good state of preservation, and the names of all persons who have been assessed therein appear legible.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. So far as I am able to ascertain the book appears to be in a good state of preservation, and the writing therein seems to be legible.

Q. State whether or not there is appended to
206 said book an additional list of lands which have been assessed by township and range.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. The answer to that will be no.

Q. Please state whether or not any of the lands assessed therein are assessed by township and range.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. I am unable to find any reference to section, township or range.

Q. Please state how the lands are described, generally. Please state whether or not the lands assessed therein are not described by a general description of the particular tract of land or designation of its locality.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because it seeks the opinion of the witness, and because the witness is not shown to be competent or qualified to answer.

A. Under the heading "Land," and the sub-headings "First rate, 11 mills per acre; second rate, 8 1/4 mills per acre; third rate 4 1/8 mills per acre," appear figures intended to indicate the number of acres of each class. In addition to that, under the headings, "Wharfs, 22 cents on every hundred dollars value; merchants, 22 cents on every hundred dollars of stock on hand first of January; Commission Merchants and Factors, 55 cents on every hundred dollars Commissions Received in the year ending first of January; Money Lent at Interest, 22 cents on every hundred dollars lent; Shares of stock
207 in banks or other incorporated companies, except manufacturing companies, 22 cents on every hundred dollar value of such shares, to be paid by the share holder or owner; Bank Agencies, $165 each; Insurance Companies, $165 each;" or under a part of such headings appear such descriptions as "James Gambell, Agent, slaves in trust for Christiana Spier, Lake Monroe, Turnbill Swamp, Near Smyrna, Lake Monroe, Spring Garden; Turnbill Swamp; N. W. Head of Indian River and Lake George; Near N. Smyrna; Forward; Agent; Near New Smyrna; Fort Reed; and other similar indefinite descriptions or words intended for descriptions.

Q. Please examine the roll and read therefrom the names of all persons who appear to have been assessed thercin, whose names begin with R.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

Counsel:
You had better begin at the beginning or wherever you choose. I want the answer to that question to cover it all.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. The surnames appearing under the head of "Names" in the book, beginning with the letter R, separately, and in connection with other names, appear to be as follows: "Reese & Williams; Rain, Cornelius; Rose, Alex. R.; Robinson, John; Rush & Mulinburg."

Q. Please state whether or not there is therein any assessment against Teresa Rodriguez on any lands which are therein set down as belonging to her.

208 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the witness is not qualified to testify as to the lands covered by any particular description in the book, and because it seeks the opinion of the witness.

A. I do not find the name of Teresa Rodriguez in the book, but I am unable to say whether any lands therein assessed or attempted to be assessed were the property of Teresa Rodriguez.

Counsel for complainants move to strike all of the foregoing answer after the words, "I do not find the name of Teresa Rodriguez in the book," on the ground that same is not responsive to the question.

Q. Please state whether or not there is therein any land assessed as the property of Teresa Rodriguez.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and seeks the opinion of the witness, and because it is not shown that the witness is qualified to answer.

A. I am not able to say whether any property appearing in this book is assessed for taxation, either state or county. I am not familiar with the law under which the taxes were assessed at the time, and I cannot say whether or not the property of Teresa Rodriguez is assessed or attempted to be assessed on the book in my possession. I have stated that I have been unable to find the name of Teresa Rodriguez, and that is as far as I am prepared to go in answer to the question.

Q. (Handing witness another document). What document is that?

To which question defendant objects, on the ground that same is immaterial, irrelevant, and seeks evidence not the best evidence.

A. The book handed me has the word, "Orange" on the front, and the figures "1851," and in the back of the book appear certificates as follows:

209 "County of Orange. I do hereby certify that the foregoing is a true and correct list and assessment of all the taxable property and subjects within the said county that have come to my knowledge, and that the amount of state taxes assessed thereon by me in the year 1851 is the sum of $713.17 1/2 seven hundred and thirteen dollars and seventeen and one-half cents (in words and figures). I do further certify that the foregoing assessment of state taxes corresponds exactly with that contained in the book filed by me in the offices of the Judge Probate, and with that retained by me, John Simpson, Tax Assessor and Collector. Dated this 1st May, A. D. 1851.

"Probate Office, Enterprise, 25th May, 1851. I hereby certify that in consequence of the absence of the County Commissioners, I have examined the tax books for the year 1851,

and find copy in this office and the one retained by the sheriff to agree with the above. Witness my hand and private seal the day and date above written. W. Campbell, Judge of Probate, Orange Cty., Fla." Followed by a scroll.

"I certify that the above abstract is correct. John Simpson, Tax Assessor and Collector. May 1st, 1851."

Attached to said book is a list marked, "Additional list, being a report of assessments made in the said year and county by John Simpson, Tax Assessor and Collector, since the assessment book was closed."

Appended to said list is the following certificate: "I certify the foregoing to be a true and correct list of all property discovered and assessments made by me for said year not included in the assessment book already forwarded to the Comptroller, and that this list corresponds exactly with one filed by me in the office of the Judge of Probate. John Simpson, Sheriff and Tax Collector of Orange County."

210 Q. Apart from that appended list, how many pages are occupied by the assessment of subjects and lands there?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. Five pages upon which the names appear, and two pages upon which a recapitulation is given.

Q. Have the names been entered in said book in alphabetical order?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks the opinion of the witness and seeks evidence not the best evidence, and because it is not shown that the witness is competent or qualified to answer.

A. They appear to have been entered alphabetically, in so far as relates to the first lettter in the surname.

Q. Do the pages of the book contain the printed form at

the head, under which, on the left hand column of the page, is printed the word, "Names?"

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. The pages each contain, at the top of the left hand column, the word, "Names."

Q. Please read from that roll the names of all persons which have been assessed therein, alphabetically, whose names begin with R.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence.

211 A. Between the name, "Polk, Robert," and the name, "Sanchez," appear the following names, "Rees & Williams; Rose, Alex; Robertson, John, Rush & Mulenburg; Rockhill and Tolar."

Q. Please examine the roll and state whether or not it appears therein that any property has been assessed in the name of Teresa Rodriguez."

To which question defendant objects, on the ground that same is immaterial, irrelevant and seeks evidence not the best evidence and seeks the opinion of the witness, and because it is not shown that the witness is competent or qualified to answer.

A. I am unable to find the name of Teresa Rodriguez in the book.

Q. Please examine the appended list and see if you can find any property assessed thereon in the name of Teresa Rodriguez.

To which question defendant objects, on the ground that same is immaterial, irrelevant and seeks evidence not the best evidence, and seeks the opinion of the witness, and because it is not shown that the witness is competent or qualified to answer.

A. The name of Teresa Rodriguez does not appear on the list attached to said book, marked "Additional list, being a report of the assessments made for said year and county by John Simpson, Tax Assessor and Collector, since the assessment book was closed."

Q. State whether or not the general method of describing the lands assessed in this roll is similar to the method adopted in the roll for 1851, which you have testified to.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and seeks the opinion of the witness.

The Witness:
You had better amend that question, I think.

Counsel:
I want to get at this—I am going to ask you in the next question—

Mr. Cooper:
I object to that mode of examination.

The Witness:
I will answer the question.

212 (Last question read to witness).

A. In answer to that I will say that the book about which I am now testifying has the figures "1851" on it, and that prior to this time I have not testified as to any book that had the figures "1851" on it.

Mr. Dewhurst:
Counsel for complainant here states that by error he stated "1851" and he means "1850."

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and seeks the opinion of the witness.

A. In answer to that question I will say that the method

of assessments in this book marked "1851" is similar to that in the book marked "1850."

Q. Please state the method of the assessment of lands which appear in the appended list. Please state whether or not it is by section, township and range.

To which question defendant objects, on the ground that it is immaterial and irrelevant, and seeks evidence not the best evidence and seeks the opinion of the witness.

A. In answer to the last question I will state that the lands on the additional list, on the list marked, "Additional list being a report of the assessments made in said year and county by John Simpson, Tax Assessor and Collector, since the assessment book was closed," contains, under the heading, "Names," certain names purporting to be the persons to whom property is assessed, and under the general heading of "Land," and the sub-headings, "Second and third rate, eight and a quarter mills and one and one-eighth mills per acre," respectively, appear figures indicating the number of acres of land and
213 under the headings, "Town lots, Improved, Unimproved, 22 cents on one hundred dollars value, including improvements, the assessor to fix the value; Wharves, 22 cents on one hundred dollars value; Merchants, 22 cents on every hundred dollars of stock on hand first of January," appears the words and figures, "Int. 20 R. 34 S. 38, (two dots repeated) 13 R. 31 S. 37 (two dots, repeated) 15 R. 32 (two dots repeated) 16 R. 33 S. 41 (two dots, not repeated) 11 R. 31 S. 42 (two dots, repeated) 15 and 16 R. 33 (two dots not repeated) 11, 12 (or 17, the witness is not able to determine which) 31 S. 41, (two dots, repeated) 13 and 14 R 32 S. 42 (a character the witness cannot make out, followed by the figures "39") (two dots repeated) 14, (an unknown character, followed by the figures): 15 R. 32," an unknown character, followed by the figures "3 S. 42 & 37," two dots, repeated, "17 R (or K) 33," an unknown character, the figures "4 S. 37," an unknown character "14 R. 31," an unknown character, "2, 40, 1," an unknown character, followed by a figure, either "3" or "8," two dots repeated, "14 R. 32 S. 35 (or 38)" two dots, repeated, "13 R. 31 S." (apparently) "38," two dots, repeated, "19 (or 29) S. 39," two dots repeated, 19 R. 28," an unknown character, followed by

the figure "9 S. (apparently) 37," two dots, repeated, "17 R. 34 S. 38," two dots, not repeated, "16 R. 33 S. 41," two dots, not repeated, "15," two dots, 33,40. Two dots, "18," and a speck that may be intended for a single dot, "34," two faint dots, "two grants on Lake Jesup, 5 grants, 3 grants on Lake Jesup." I haven't read the acreage at all. I have only testified to what was under these headings. I said that the figures, the number of acres, was given under this heading here (pointing) and I haven't repeated those figures.

Q. Please state whether or not all these rolls which you have testified about were produced to the master from the records of the Comptroller of the State of Florida,
214 and by direction of the Comptroller.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and because the witness is not qualified to state whether or not these documents were originally of the records of said office.

A. In answer to that question I will state that I was directed by the Comptroller of the State of Florida to ascertain whether or not certain books purporting to be assessment rolls for the County of Orange for the years 1845 to 1851, inclusive, were in the vault connected with his office, and if so, to produce the books and give such evidence in connection therewith as would be in accordance with the records so found. I will state, however, that no book was found for the year 1847, and that my testimony in relation to the books as heretofore given will fully explain the nature of the books, in so far as it was in my power to describe them, in answer to such interrogatories as were propounded to me.

Cross-Examined.

By Mr. Cooper:

Q. When did you first become connected with this office, Mr. McIntosh, officially?

A. In 1878.

Q. What is your age, Mr. McIntosh?

A. Fifty-four years.

Q. You, personally, know nothing of these books when they

first came into this office, or the manner or origin of their coming into the comptroller's office, do you?

A. I have no knowledge as to the books antedating my first examination thereof, after my employment in the office.

Q. There are no official file marks on these books
215 by the comptroller, or any officer in charge of the comptroller's office, showing such filing or the time thereof, are there?

A. So far as I have been able to ascertain from the books the memorandum thereon does not contain the name or purport to contain the name of any person connected with the office to show the filing thereof.

Q. In the office?

A. Well, you may add, in the office.

Q. You do not personally know the handwriting in any of these books or what purport to be the signatures in same, do you?

To which question plaintiffs object, on the ground that the official signatures of the various state officers do not have to be proven.

A. I do not.

Q. You do not know anything, personally, I understand, of the persons or attempted descriptions of property, or the manner of describing lands for assessments for taxes, as shown by the books and in use at that time?

A. Not of my own personal knowledge.

Q. Do you know of your own knowledge in reference to where these books were or how they were kept or cared for prior to 1878?

A. I do not. I have no knowledge of them, whatever, except that they were found in the office after my employment.

Q. Will you please state, in which of these books do the leaves of the books appear to be loose from the backs or covers, which of them appear now to be loose from the backs or covers.

A. (Examining books in question). The books marked, "Orange County, 1845" and "1846" and "1848."

Q. Will you please state the appearance of the books of 1845, 1846 and 1848, in reference to their condition, and the stains or wear from time?

A. The book marked "Orange County Tax Re-
216 turns for 1845" appears to be stained on every page, from age, or from age or from exposure to moisture. The book for 1846 appears to be stained and also to have been so effected by moisture or otherwise, as to cause parts of the leaves at the bottom of the pages to drop off, leaving openings at the bottom that renders it impossible to determine definitely what they are, in two instances, at the bottoms of the pages, under the heading, "Names."

Q. Is there, or not, what purport to be a supplement or addition, of some character, in writing, found with this book, but now disconnected from same, apparently by the sealing wax with which it was attached to the book having been destroyed or injured by moisture or otherwise?

A. There is a supplemental document or paper which appears to have been originally attached to this book, attached by wafer seal to this book for 1846, which appears to show the settlement of the tax collector on account of taxes of two years, 1845 and 1846. The settlement apparently was made with the county commissioners of Orange County, and the document or paper may have been detached by reason of being subjected to moisture from natural causes, or it may have been forcibly detached as to which the witness is unable to state.

Q. You do not know and cannot state of your own knowledge whether or not at the time these books came into this office there were any other or additional or supplemental assessment rolls of Orange County for the same years or each of them, or either of them besides these filed or placed in this office, can you?

A. To which years?

Q. From 1845 to 1851, about which you have been testifying, either or any of these years?

A. I am unable to state as to whether or not there were any other papers filed, attached to the books in question. And so far as relates to the document or paper attached to the book for 1846, it appears that the book was certified to be
217 correct by the tax assessor on the 4th day of March, A. D. 1846, and that the document or paper purporting to be a settlement by the tax collector with the county commissioners was dated the 10th day of May, 1847, and for

that reason I cannot state that the letter paper was appended to the roll when it was filed in the office or not.

Q. So far, as you know, in these years or some of them, at the time these books came into this office, there may have been other or additional and supplemental assessment rolls of those years, that then or at that time came into the office, so far as you know?

To which question complainants object, on the ground that same is immaterial and irrelevant, and seeks the opinion of the witness as to contingencies for which there has been no foundation laid to show that they existed.

Counsel:

I refer, of course, to your personal knowledge.

A. So far as I know, personally, there may have been additional lists filed with either or all of said books or supplements thereto, at any time prior to 1878, as I was not until then connected with the comptroller's office, and was not in a position to have personal knowledge of any of the transactions of the office.

Q. As I understand your testimony with reference to the descriptions or attempted descriptions of lands upon these books, you cannot and do not testify as to whether such descriptions, or any of them, cover or included the grant of five thousand five hundred acres of land made the 18th day of October, 1815, by the authorities of Spain, alleged to have been confirmed to Teresa Rodriguez, described as on the two banks of the creek which empties into the St. Johns River, about two miles north of Long Lake, being the land in controversy?

218 A. I am unable to state, affirmatively or negatively, whether said lands were assessed on said books or not. I would like to add that in the absence of specific descriptions it would be impossible for me to determine a question of that nature.

Q. Do you know of your own knowledge what the use of the word, "same" or "also," or the word, "others," in the descriptions of the persons upon these books, refer to?

A. I do not.

Q. Will you please examine page 4 of the tax roll of 1850,

near the foot of the column, immediately before the last entry, and state whether or not, under the general heads of "lands," third rate, 4 1/8 mills per acre," "5000" appears; and what words of description follow that entry?

A. Under the heading, "third rate, 4 1/8 mills per acre," which is a sub-heading of the general heading, "Lands," appears in figures "5000" and following and to the right of the said figures appear the words, "Long Lake, Forward Agent," and under the heading of "Amount," the general heading, "Amount," and the sub-heads, "Dollars and Cents," appears "20 Dollars 62 1/2 cents," in figures.

Q. Please state if anything precedes the figures "5000," to which you have just referred?

A. Under the heading, "Names," preceding the figures, "5000," appears the name "Young," Philip R."

Q. Please state whether or not the recapitulation of assessments with this book of 1850 appears to have become detached from the book, and contained on a separate sheet?

A. There appears to be a recapitulation on the book for 1850, and also a recapitulation on a separate sheet, which is detached from the assessment roll, and there is also a recapitulation on a separate sheet which is attached to the assessment roll, apparently by a wafer. The two separate sheets (that is, the one detached and the one attached by a wafer) contain certificates signed by John Simpson, Tax Assessor, in which he says, "I certify the above to be correct." But the total figures in all three of the recapitulation disagree.

219 Q. Will you please examine the book marked, "Tax Book, Orange County, 1846," on the third page and state under the headings, "First Rate Lands, Second Rate Lands" and "Third Rate Lands," the figures and words or description, if any, following same, and what precedes those words?

A. Under the heading, "First Rate Land 1 cent per acre," appears the figures "500." Under the heading, "Second Rate Land, 3/4 cents per acre," appears the figures "1000." Under the heading "Third Rate Lands, 3/8 cents per acre," appears the figures "3900." Following after that, and on the same line, appears "English Big Spring or Wekiva." And under the headings of "Dollars and Cents" appears "27 Dollars" and "12 1/2 cents," and immediately preceding the figures and

words given, and on the same line, under the heading "Names," appears the word, "same."

Q. Examine the book marked "Orange County Tax Returns for 1845," under the heading of "First Rate Land; Second Rate Land; Third Rate Land; state whether or not under the heading, "First Rate Land," the figures "400" appear, and under the words "Second Rate," the figures '1000," and under the words "Third Rate," the figures "4000," appear, on the fourth page, on the fourth line, and what entry appears to precede and follow these figures?

A. The figures as stated appear under the headings as stated and preceding the figures, under the heading "Names," appears the word "Same," followed by two ditto marks, and following after the figures "4000," on the same line, are the words "At the mouth of English Spring or Wekiva." And under the heading of "Billiard Tables" and "Wharves in use," appear the figures "1850" in pencil, the rest of the entry being in ink. And following thereafter on the same line, in ink, under the headings "Dollars" and "Cents" appears the figures "15 50."

Q. Please state what name, if any, appears immediately above the word "same" and the ditto marks referred to?

A. "Levy, M. E."

220 Q. Please examine the book marked "Orange County Assessment for 1889," page 3, opposite the name "Levy, Moses E.," under the head of "Names," and state what figures appear under the headings "Lands, second rate" and "Third rate," and what words of description on the book, if any, follow same?

A. On page 3 of the book marked "Orange County Assessment Book 1849," on the same line with and following the name, "Levy, Moses E.," under the general heading "Land," and the sub-heading "Second Rate, 8 1/4 mills per acre," appear the figures "3500," and under the same general head, and the sub-head "Third Rate, 4 1/8 mills per acre," appear the figures "4400," and following thereafter on the same line, the words "Of different grants on the Wekiva." And on the same line, under the general head "Amount," and the sub-heads "Dollars" and "Cents," appears "46" Dollars and "58" cents. And in the blank column following after the column for amount, appears a pencil character which the witness is unable to decipher. I don't know what it is. If I was guessing I could guess at it.

Q. Will you please examine the additional list attached to the book marked "Orange 1851," heretofore referred to by you, and state the number of acres of third rate lands or the numbers on the last line, after the words "Drisdell, estate of," under "Names?"

A. On the line on which appears the name "Drisdell, estate of," under the heading "Names," and following thereafter, in the general column marked "Land," and the sub-column marked "Third Rate, 4 1/8 mills per acre, appear the figures "5320," and following thereafter, on the same line, is a word that the witness cannot make out, followed by the word "Taxes." And under the headings "Dollars" and "Cents" appear "21 94," with the figure "2" following thereafter, crossed out with a pen.

Q. Please state whether or not the words "Three
221 grants" and the words "on Lake Jesup," heretofore referred to by you in your testimony, are on different lines, and apparently refer to different lands, as shown on the list.

A. I have before me the additional list, the paper marked "Additional List, being a report of assessments made for said year and county by John Simpson, Tax Assessor and Collector since the assessment book was closed," said additional list being attached by a wafer to the book marked "Orange, 1851," with the words, "Revenue for 1851," printed and written thereon, and I find that the words "Three grants" appears opposite the figures "3000," under the general heading "Land" and the sub-head "Third Rate, 4 1/8 mills per acre," and the words "on Lake Jesup," appear under the same general and sub-headings, opposite the figures "2000," both on separate lines, and assessed or entered opposite different names.

Redirect Examination.

By Mr. Dewhurst:

Q. You testified on your cross-examination that on page 3 of the assessment roll for 1846, on the line designated by counsel for the defendant, appeared the word "same." Please state what appears written under the heading "Names," on the next line immediately above that, and also on the line preceding that. That (pointing) was the line you were testify-

ing about. Now please state what appears on the line immediately above that, and on the line immediately above that?

A. Immediately above the line indicated and about which I have testified, appears the word "same," and immediately preceding that on the next line appears the name, "Levy, Moses E."

Q. You testified on your cross-examination that the bottom part of certain pages in the roll for the year 1846 had been so abraded that it to a large degree obliterated the names on such pages. Please state what letters of the alphabet
222 are on the portions of the pages which are obliterated.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence.

A. On page 1, immediately preceding—

Counsel:

Just say "the letter D," is all I care for.

A. Immediately preceding the damaged portion of the page appears a name beginning with the letter D, and on page 4, immediately preceding the damaged portion of the page, appears a name beginning with the letter "W."

One A. C. CROOM was then duly sworn as a witness for the complainants and testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Mr. Croom, please state your name and occupation or profession, and what official position you hold?

A. My name is A. C. Croom, and I am Comptroller of the State of Florida.

Q. State whether or not the request has been made to you by counsel for complainants in this case to produce before the Master in Jacksonville the tax rolls of Orange County for the years 1845 to 1851, inclusive, which existed in your office, and if so what action you took in the matter or what response you gave to the request.

To which question defendant objects, on the ground that it presupposes that the records referred to were such tax rolls for the years mentioned, and because it is not shown that the witness has any personal knowledge of whether there were such tax rolls at that time, or the history of same, and because the question is otherwise incompetent and immaterial and irrelevant.

223 A. Well, the matter was mentioned to me here, yesterday, by yourself, and I said to you in reply to it that if there was any attempt made to take those records from the office that I would resist it, so far as the courts would sustain me in it.

Q. And apply to the courts to prevent it?

A. Yes; apply to the Court. I stated also that I would be perfectly willing to give you certified copies of any portion of those records that you might call for, under the seal of the office.

Q. It is a fact, then, that you declined to allow the records to be taken from your office?

A. Yes; or rather I would say it is a fact that I said to you that I would refuse if the attempt was made.

Cross-Examined.

By Mr. Cooper:

Q. If a court of proper authority ordered or requested the inspection of the books, you would recognize such order made by the court for inspection, I presume, Mr. Croom?

A. You mean inspect them here or remove them from the office?

Q. Any inspection that the Court might direct?

A. Well, I don't know exactly how to answer that question. I would resist it as far as possible. I would get advice on it, and if I could get around it I would get around it, because I don't think it is right to take them out of the office. They are the only records of that kind here, and I received them from my predecessor as records of the state, and I don't think it would be a proper thing to do. If I had any appeal from the order of the Court I would certainly make it.

224 One C. B. GWYNN was then called as a witness for the complainants and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Will you please state your residence and occupation?

A. My residence is Tallahassee, occupation clerk in the office of the Commissioner of Agriculture.

Q. State whether or not the office of the Commissioner of Agriculture is the land office of the State of Florida, and contains the records relating to lands?

A. The Commissioner of Agriculture is the custodian of all records relating to lands in the State of Florida.

Q. State whether or not among the records relating to lands in the State of Florida, the approved lists of the State's selections signed by the United States Surveyor General, are contained in the office?

A. The approved lists of swamps and overflowed lands selected by the state under Act of Congress, September 28th, 1850, which are approved by the United States Surveyor General, are filed in the land department in the office of the Commissioner of Agriculture.

Q. State whether or not any considerable number of those lists were approved by Charles H. Parlin, the United States Surveyor General?

A. Several of such lists have been approved by Hon. Charles H. Parlin, formerly United States Surveyor General.

Q. State whether or not upon those approved lists appears his written signature?

A. Yes.

Q. Will you state what opportunities you have had for familiarizing yourself with the signature of Charles H. Parlin?

A. As clerk in the office I have received and filed those lists.

Q. Do you deem that you are sufficiently familiar with the signature of Charles H. Parlin to identify the same?

A. I think so.

Q. Please look at this copy of township plat of
225 Township 19, Range 28 (showing witness plat) and state whether or not the signature attached to the

certificate thereon, purporting to be the signature of Charles H. Parlin, United States Surveyor General, is the genuine signature of the said Charles H. Parlin?

A. I believe the same to be his genuine signature.

Cross-Examined.

By Mr. Cooper:

Q. Did you ever see him make his signature?

A. I never have seen him; no, sir. I never have seen him sign his name, that I remember.

Q. Your knowledge is from a comparison of the signatures with the records in the office?

A. It is.

Complainant here offered in evidence, Exhibit D to the bill of complaint in said cause, attached thereto, being a certified copy from the office of the Surveyor General of the United States of a tracing of the official plat of Township 19, Range 28, and being the paper the signature upon which the last named witness testified about.

To the introduction of which in evidence, defendant objects, on the ground that same is immaterial, irrelevant and incompetent, and because the plat or survey by the United States could not have the effect of vesting the title under the grant from Spain, as confirmed; and further, that without the field notes accompanying the plat, it is not sufficiently definite to use as evidence for any purpose.

Whereupon, the said plat was filed in evidence as Complainants' Exhibit No. 10, and is made a part of this report.

The hearing was here adjourned, subject to further order.

226 And the taking of testimony in said cause was resumed on Saturday, January 9th, 1909, at 12 o'clock noon, in the office of Mr. Dewhurst, of counsel for the complainants, in St. Augustine, pursuant to notice herein given.

Present, the said Master, W. W. Dewhurst, Esq., of counsel for the complainants, and J. C. Cooper, Esq., of counsel for the defendant. And MORRIS P. FOLEY was called as a witness for the complainants, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Please state your name and the position you hold?

A. My name is Morris Patrick Foley. I am rector of the cathedral at St. Augustine, Florida.

Q. Are you assistant to the Bishop?

A. Assistant to the Bishop.

Q. Please state what you mean by the cathedral. You mean, by the cathedral, the Roman Catholic Church at St. Augustine?

A. Yes; the Roman Catholic Parish at St. Augustine.

Q. As such, do you have charge of the records of the parish?

A. I have charge of all the parochial records.

Q. State how complete those records are, from what date they go?

A. Our records now go back three hundred years, go back from 1595.

Q. Are the records of the parish as to the sacrament of marriage and of baptism and the right of burial, as performed by the parish priest, kept by reason of the ritual and useage of the Roman Catholic Church?

To which question defendant objects, on the ground that same does not seek the best evidence, and that these are not records required by the civil law to be kept, and therefore incompetent as evidence.

A. They are so kept.

Q. State whether or not it is a law of the Roman Catholic Church that such records shall be kept?

227 To which question defendant objects, on the ground that same is immaterial and irrelevant, and does not seek the best evidence and that these are not the

records required by the civil law to be kept, and are therefore incompetent.

A. It is the law of the church that complete records be kept.

Q. By whom are these records required to be kept by the church law?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and that these are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. By the parish priest.

Q. Please examine the record of marriage about the year 1796, if you have it, and state whether or not entries therein appear to have been made at the time the transactions there noted occurred. That is, by looking through the book, Father, I want you to say whether you can state whether the entries appear to have been made at the time the transactions occurred or about that time?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. (Examining book). They were entered at the time of the occurrences. That is a part of our ecclesiastical law, that we shall enter them at once.

Q. Who was the parish priest at about that date?

A. Miguel O'Reilly.

Mr. Cooper:

State whether you state that of your own knowledge or from the records.

A. It is my own knowledge. I know that as a matter of history.

Q. Do the official records in your possession also show that he was acting as priest at that time?

228 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and that such records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. They do so show.

Q. State whether or not Father O'Reilly is now living or dead?

A. He is dead.

Q. State whether or not the handwriting in this register which you have produced is that of Father O'Reilly?

A. I don't think it is.

Q. Well, now, from examining the register, other entries in it, it appears to be, does it not?

A. No; in his time a clerk or escribano did it.

Q. That is, the entries were made in the handwriting of the clerk or escribano?

A. Yes.

Q. Does that appear generally through the book in these entries?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and that the said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. Yes; it does appear.

Q. And from an examination of the numerous entries in this book you testify that that is the fact?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and that the said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. I do.

Q. Please state what the entry is which appears
229 on page 121 of this register which you have produced?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and that the book or record in question is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. The entry is of the marriage of Miguel Marcos and Teresa Rodriguez.

Q. Please state whether this paper which you hold in your hands (handing witness paper) was transcribed by you from this official register which you have produced, signed by Father O'Reilly.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and that the said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. This was translated, not transcribed.

(Counsel hands witness another paper).

The Witness:

(Referring to paper just handed him by counsel). This was transcribed.

Q. Please state whether there is a true and correct copy of the original entry, as it appears in the official register of the parish which you have produced.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. This (referring to paper just handed witness) is a true and correct copy.

Q. Are you sufficiently familiar with the Spanish
230 language to translate Spanish?

A. I am.

Q. Will you please state whether or not the paper which you hold in your hand is a correct translation of the Spanish entry which appears in that register?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. It is.

Q. Please state whether the certificates to each of those papers was made by you, and if that is your handwriting on each of them.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the records referred to are not records required by the civil law to be kept, and therefore are incompetent as evidence.

A. These are the certificates that I made out, in my own handwriting.

Q. Please state whether or not the Roman Catholic Parish at St. Augustine has a corporate seal, and if so, whether seal attached to your certificate of the original entry and of the translation is the corporate seal of that parish?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. The parish at St. Augustine has a corporate seal, and the seal attached is that corporate seal.

Q. Where were you educated, Father?

A. In Rome. I made my final studies in Rome, I mean the seminary studies.

231 Q. Are you familiar with the Roman law which governs the Roman Catholic Churches and the duties of the priests therein?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because it is not sufficiently shown that the witness' training would cover the law controlling evidence or records.

A. I am.

Q. Please state whether or not the law governing the Roman Catholic Church requires the entry in a register, in an official register, by the parish priest, at the time the event occurs, of his performance of the sacraments of baptism and of marriage, and of the right of burial?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because the records referred to are not the records required by the civil law to be kept, and are therefore incompetent as evidence.

A. It does so require.

Q. Who is the custodian of those records under that law?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. The parish priest.

Q. Does that law authorize and require the parish priest to furnish certified copies or true copies of those registers?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. I don't understand the drift of that question.

Q. I want to find out from you whether the parish
232 priest, who is the official custodian of the records, is authorized to furnish certified copies of them.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. Yes; we are authorized. I thought you said "required" to. We are authorized to.

Q. The parish priest, under the Roman law, is authorized to furnish certified copies of all records?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because said records are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. Yes.

Q. Can you state whether or not the Roman law prevailed in the Island of Cuba up to the time Spain relinquished its sovereignty?

To which question defendant objects, on the ground that same is immaterial and irrelevant and because it is not shown that the witness has personal knowledge of the law of Cuba, or is qualified to testify with regard thereto.

A. Yes; it is a universal law, we are all required, wherever we are, to regard these things. There is one law for all.

Mr. Cooper:

You refer now to the church law, not the civil law?

A. The church law; yes. I am speaking of the Roman ecclesiastical law. I would have to obey that wherever I happen to be stationed.

Q. Further identifying this register that you have produced, please state what it is. Just simply state what that register is that you have produced and testified to, as to this copy of the marriage record.

233 To which question defendant objects, on the ground that same is immaterial and irrelevant, and

seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. It is the register of marriages, Book 1, among the white people, 1784 to 1801.

Q. Is it kept by Father O'Reilly all the way through?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore inadmissible as evidence.

A. No; Thomas Hassett was here. (Referring to book).

Q. State where Father O'Reilly's certificates begin.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. Well, he was first an assistant to Father Hassett. His certificates start from the beginning, but as an assistant. He was a vicar there. (Pointing to particular entry).

Q. In 1784 he was a vicar?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence nad because the records from which witness testifies are not records required by the civil law to be kept, and are therefore incompetent as evidence.

234 Q. Please state what he was in 1796, when this certificate is given.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence by the civil law to be kept, and are therefore inadmissible as evidence.

A. He was the parish priest then.

Q. And he so recites in the certificates which he enters in the book?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. He so recites.

Complainants here offer in evidence copy of the marriage record of the marriage of Miguel Marcos and Teresa Rodriguez, testified to by the witness as being a true copy from the official register of the Parish of St. Augustine, in his charge, bearing his certificate.

To the introduction of which in evidence, defendant objects, on the grounds that same is irrelevant, and that there is no authority of law for such records.

Whereupon, the said copy was filed in evidence as Complainant's Exhibit No. 11, and is attached hereto and made a part of this report.

Complainants also offered in evidence the translation from the Spanish language to the English language, of the said marriage record, being the witness' certificate, referred to in his testimony.

To the introduction of which in evidence, defendant objects, on the ground that same is irrelevant, and that there is no authority of law for such records.

And the said translation was filed in evidence as Complainant's Exhibit No. 12, and is hereto attached and made a part of this report.

235 Q. Have you brought with you the official register of baptisms, kept by the parish priest of the St. Augustine parish for the year 1800?

To which question defendant objects, on the ground that

same is immaterial and irrelevant, and seeks evidence not the best evidence and because the register referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. I have.

Q. Please state what the book you hold in your hand appears to be, what it is?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. Book Three of Baptisms of Whites, running from 1800 to 1815.

Q. Of the Parish at St. Augustine?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. Of the parish priest at St. Augustine.

Q. And by whom was that register kept?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. By the parish priest, Father O'Reilly, Miguel O'Reilly.

Q. And was that also kept according to law?

236 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence, and because it is not shown that the witness is qualified to testify what the said law was, and because it seeks a conclusion of the witness.

A. It was.

Q. Do the entries therein appear to have been made at the time the transactions noted occurred?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. They do.

Q. Were the entries made therein by the parish priest?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence and because the question seeks the conclusion of the witness.

A. They were.

Q. Are they in the handwriting of Father O'Reilly?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence and because the witness is not shown to be qualified to answer, and because the question seeks the opinion of the witness.

A. The signatures are.

Q. As to each entry?

237 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the records referred to are not records required by the civil law to be kept, and are therefore inadmissible as evidence and because the witness is not shown to be qualified to answer.

A. As to each entry.

Q. Please turn to page 33 and state what entry appears therein.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. The baptismal record of Miguel Josef Eustaquio Marcos.

Q. Please state whether or not the paper you hold in your hand (handing witness the paper) is a true and correct copy of the entry as it appears in the official register which you have produced?

To which question defendant objects, on the ground that same is immaterial and irrelevant and because the record referred to is not a record required by the civil law to be kept, and it or a copy thereof is incompetent as evidence.

A. It is a true and correct copy.

Q. State whether or not you transcribed from that register, and whether or not you signed that certificate attached thereto and affixed thereto the corporate seal of the Parish of St. Augustine.

To which question defendant objects, on the ground that same is immaterial and irrelevant and because there is no authority of law for the introduction of such records or a copy thereof, and because the question seeks evidence not the best evidence.

A. I did so transcribe it and affixed the certificate bearing the corporate seal.

Q. Please state whether the paper you hold in your hand (handing witness another paper) is a correct translation into the English language of that entry which you have just testified to?

238 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record

referred to is not a record required by the civil law to be kept, and is therefore inadmissible in evidence.

A. It is a correct translation of the entry.

Whereupon, complainants offered in evidence the said copy of the record of baptism of Miguel Josef Eustaquio Marcos, in the Spanish language, testified to by the witness to be a true and correct copy of the original as the same appears upon the official register of the Parish of St. Augustine, with the certificate of the witness attached thereto.

To the introduction of which defendant objects, on the ground that same is incompetent and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

And the said copy with the certificate attached thereto was filed in evidence as Complainants' Exhibit No. 13, and is hereto attached and made a part of this report.

Complainants also offer in evidence the translation of Complainants' Exhibit No. 13 testified to by the witnesses as having been made by him and bearing his certificate.

To the introduction of which, defendant objects, on the ground that same is incompetent and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

And the said translation and certificate attached thereto was filed as Complainants' Exhibit No. 14, and is hereto attached and made a part of this report.

239 Q. Please turn to page 78 of the register which you have introduced and state what appears therein on page 78.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best evidence and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. The baptismal record of Dorotea Paula Plutarca Marcos.

Q. State whether or not you are now speaking of the same register about which you have just testified.

To which question defendant objects, on the ground that same is immaterial and irrelevant and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. I am speaking of the same register.

Q. Please state whether the paper which you hold in your hand (handing witness a paper) is a true and correct transcript of the entry which appears in this official register on page 78.

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because there is no authority of law for the introduction of such records or a copy thereof.

A. It was transcribed by me and the certificate thereto attached is in my handwriting, and bears the corporate seal of the parish at St. Augustine attached thereto.

Complainants offer in evidence the said paper last identified.

To the introduction of which, defendant objects, on the ground that same is incompetent and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

Whereupon, the said copy was filed in evidence as Complainants' Exhibit No. 15, and is attached hereto and made a part of this report.

240 Q. State if the paper you hold in your hand (handing witness another paper) is a true and correct translation of the last paper you have testified to.

To which question defendant objects, on the ground that same is immaterial and irrelevant, and because there is no

authority of law for the introduction of such records or copy thereof.

A. It is a true and correct translation of the last paper I held.

Q. And is the certificate attached thereto in your handwriting?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

A. The certificate attached is in my handwriting and the seal is attached to it. That is the signature to the certificate is in my handwriting. It is typewritten.

Whereupon, complainants offered in evidence the said translation.

To the introduction of which, defendant objects, on the ground that same is immaterial and irrelevant, and because there is no authority of law for the introduction of such records or copy thereof.

And the said translation was filed as Complainants' Exhibit No. 16, and is hereto attached and made a part of this report.

Q. Please turn to page 180 of the same register about which you have testified and state what appears on that page?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because the record referred to is not a record required by the civil law to be kept, and is therefore incompetent as evidence.

A. The baptismal record of Maria Gracis Paula Marcos.

Q. Please state whether the paper you hold in your hand (handing witness paper) is a true and correct transcript of the entry which appears on page 180 in this official register which you have produced.

241 To which question defendant objects, on the ground that same is immaterial and irrelevant and because there is no authority of law for the introduction of such record or copy thereof.

A. This is a true and correct transcript of the record of baptism appearing on page 180 of the same book.

Q. Is the certificate attached thereto subscribed by you and the official seal of the parish thereto affixed?

To which question defendant objects on the ground that same is immaterial and irrelevant and because there is no authority of law for the introduction of such record or copy thereof.

A. It is so subscribed and the seal affixed.

Whereupon, complainants offered in evidence the said copy or transcript last referred to.

To the introduction of which, defendant objects, on the ground that same is incompetent and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

Whereupon, the said copy, with the said certificate attached thereto, was filed in evidence as Complainants' Exhibit No. 17, and is hereto attached and made a part of this report.

Q. State whether the paper you hold in your hand (handing witness another paper) is a true and correct translation of the last exhibit about which you have testified?

To which question defendant objects, on the ground that same is immaterial and irrelevant and because there is no authority of law for the introduction of such record or translation or copy thereof.

A. It is a true and correct translation.

Q. And the certificate attached thereto is subscribed by you and bears the corporate seal?

242 To which defendant objects, on the ground that same is immaterial and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

A. The certificate is subscribed by me and bears the corporate seal of the parish.

Whereupon, complainants offered in evidence the said translation with the certificate attached thereto.

To the introduction of which, defendant objects, on the ground that same is incompetent and irrelevant, and because there is no authority of law for the introduction of such record or copy thereof.

Cross-Examination.

By Mr. Cooper:

Q. How long have you, personally, been familiar with these records?

A. Five years.

Q. How long have you been custodian of the records?

A. Five years.

Q. Do you know anything, personally, as to the custody or keeping of these records prior to your having charge of them?

A. I do.

Q. Are you speaking now of your personal knowledge, or your historical knowledge or information?

A. Oh, my personal knowledge covers a period of sixteen years, since my entering into the diocese.

Q. What was your first knowledge of the records?

A. I can't state a specific case. I know, personally, that these records were kept in the archives of the cathedral. I knew that from the time I came into the diocese in 1882.

Q. Did you have any personal connection with the records before that?

A. No.

Q. Did you see the records before you began to keep them, yourself?

A. Yes; I did. I was an assistant here in 1896 and was familiar with the records at that time, twelve years ago. I was not custodian then.

Q. When you speak of the signatures and hand-

243 writing in these books, you refer, of course, to what appear to be these signatures? You know nothing, personally, about the signatures?

A. The man who made the signatures is dead. He died before my time.

Q. You identify the signatures simply from finding them in the book?

A. Yes.

Q. Do you know whether these records appear to be continuously kept or whether there are any breaks in the records?

A. They have been continuously kept up until—I can answer that this way: they have been continuously kept during the Spanish occupation, and for probably ten years after that, from 1820, let us say, to 1830, roughly; as there was no parish priest, they were kept—every record was made—but it was not recorded on our books. Sometimes a man came down from Savannah or Mobile or even Charleston. There was no parish priest, in other words. It may be that some of those records are on file in those churches. But through the Spanish occupation all the records were kept, inviolably.

Q. Do you know up to what date immediately following the Spanish occupation, the records appear to have been continuously kept?

A. They were kept continuously up to the year 1832, and there is a gap from 1832 to 1835. I say continuously: we have the records of baptisms and marriages and funerals all through the ten years or more following the Spanish departure, the departure or transfer of flags, but whether they are complete I don't wish to go on record as saying. But there is a gap from 1832 to 1835 of two years. There is no gap, but whether every record was entered I do not wish to put myself on record as saying.

Q. Between 1820 and 1830, what seems to be the condition of the records?

A. They seem to be intact.

Q. Do they seem to be complete? Do they seem to cover all events of that character?

A. I think they do.

244 Mr. Dewhurst:

The question was whether they appear to be so.

A. Yes; they appear to be intact.

Cross-Examination Continued.

[Q.] Where have these books actually been kept during the time you have known them?

A. In the cathedral rectory, in the Episcopal residence.

Q. Do you know whether this parish or this diocese is incorporated under the civil law?

A. I think that the bishop is a corporation sole.

Q. Do you know whether it has ever been incorporated under the civil law by an act of the legislature or any judicial act of court?

A. Well, I can only refer to my answer to your preceding question, that the bishop is the legal head, whatever you call it—corporation sole.

Q. That is what you mean when you speak of a corporation in your testimony? You refer to the bishop?

A. I refer to the bishop as to the transaction of legal business throughout the diocese, but I am not referring to this matter at all. The diocese is made by Rome, and its limits defined.

Q. This seal that is attached to your certificates, do you know anything of the history of that seal or how long it has been used as a seal?

A. That seal has been used in my time. When I came here I had that seal struck.

Q. Do you know whether there was a seal in use before that?

A. I cannot say. This is the seal of the parish, as distinguished from the seal of the diocese which is the personal property of the bishop.

Q. By what authority do you use the seal of the parish?

A. As Rector of the Cathedral; as the Parish Priest.

Q. Is that by virtue of a church law?

A. By virtue of a church law.

Q. Do you speak, as well as read, write, the
245 Spanish language?

A. I do.

Q. What law or rules regulate the keeping of these records to which you have referred?

A. The cannon law of the church.

Q. What has been your familiarity with that law or usage?

A. Since I have had charge of parishes I have obeyed that law for the last thirteen years.

Q. Do these books appear to be entire or are there any of them from which pages are missing? Or what have you found to be their physical condition?

A. I have found that their physical condition is intact. They are entire.

Q. Do you know whether or not they have ever been recompiled or rebacked, or are they in exactly the condition they probably were originally made in, all of them?

A. The books submitted bear the original binding or a remnant of it.

Q. Do all of these entries appear to be in the handwriting of persons other than the parish priest signing them?

A. (Referring to book). They do not. I saw one here that looked as if it had been entered by Father O'Reilly, himself. That page, I think (pointing to particular page) is in his own handwriting.

Q. You might give the page you are talking about?

A. Well, on Book One of Marriages, page 14, the handwriting seems similar, that is, the handwriting in the body of the document seems to be the same as the attached signature.

Q. In reference to these certificates you have testified about, are they in the handwriting of persons other than the parish priest signing them?

A. They are.

Q. Are those certificates or signatures apparently by Father O'Reilly, that you have testified to?

A. I think one is by Michael Crosby. Michael Crosby succeeded Father O'Reilly as parish priest, and before his succession he was vicar, he was an assistant, and, even
246 as his assistant, he couldn't record marriages, as we do right along. Michael Crosby signed this one (pointing to entry in book) in 1805. He signs himself, however, as assistant or curate.

Q. Do you know how far, or down to what period, those records appear to be entered or signed by Father O'Reilly?

A. (Referring to records). They have his signatures attached to the records up to the 19th day of October, 1810, that is, in this book of baptisms. I don't see any after that. I think he passed away—I think he died—in 1811. I am not sure. Then Michael Crosby succeeds him as parish priest.

Redirect Examination.

By Mr. Dewhurst:

Q. Please state whether Rev. Michael Crosby was the assistant or vicar of the parish church at St. Augustine in the year 1815?

To which question defendant objects, on the ground that same is immaterial and irrelevant and because it seeks evidence not the best evidence, and because the records from which the witness' testifies were not records required by the civil law to be kept and are therefore incompetent as evidence.

A. He was.

Q. Do the several entries which are signed by Rev. Michael Crosby in the register which you have produced appear to be in the handwriting of the said Michael Crosby, speaking from an inspection of the register, itself, and the various entries therein?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, and because the records referred to are not records required by the civil law to be kept, and are therefore incompetent as evidence.

A. They do so appear.

247 Complainant here offers in evidence so much of Volume 3, American State Papers, page 770, Gales & Season Edition, page .... of Duff Green's Edition, reading as follows:

"Minutes of Board of Land Commissioners, City of St. Augustine, District of East Florida.

"Agreeable to an act of congress entitled an act for ascertaining claims and titles to land within the territory of Florida approved the 8th of May, 1822. Also an act of congress entitled an act amending and supplementary to the act for ascertaining claims and titles to land in the territory of Florida,

and to provide for the survey and disposal of the public lands in Florida, approved the 3rd of March, 1823.

"Present, the Hons. Davis Floyd, Wm. W. Blair and Alexander Hamilton, appointed and commissioned for the purpose of ascertaining the claims and titles to lands within the district of East Florida.

"Said commissioners met at the government house in the city aforesaid on Monday, the 4th day of August, 1823, agreeably to previous notice published in the East Florida Herald, and proceeded to open their session for the duties assigned to their office."

And complainants further offer, from page 810 of the same volume, the following:

"Saturday, November 29, 1823, the Board met pursuant to adjournment; present, all the members; and adjourned until Monday, December 8, 1823.

"The following claims were received this day."

Counsel:

Then follows the list of claims, on pages 810, 811, 812, 813, 814 and 815. But on page 815 the following entry is offered by complainants, to-wit:

248 "Teresa Rodriguez, on behalf of herself and children, by her attorney, John W. Simonton, presented her claim for five thousand five hundred acres of land lying on two margins of a creek running from the west and empties into the St. Johns River about two miles north of a lake known by the name of Long Lake, and has never been surveyed—with reference to the public archives in this city for the grant and certified copy of the commission by Governor Estrada, dated ..... 18, 1815, filed."

And complainants further offer from Volume 4 of said American State Papers, on page 576, Gales & Seaton Edition, and page 288 Duff Green's Edition, the following:

"Minutes of Board of Land Commissioners, District of East Florida, St. Augustine, Monday, March 28, 1825."

"Pursuant to an act of congress entitled an act to extend

the time for the settlement of private land claims in the territory of Florida, passed March 3, 1825, the board met this day.

"Present, the Hons. Davis Floyd, George Murrey and Will H. Allen, and proceeded to open their session for the duties assigned to their office.

And complainants further offer, from the same volume, page 594, the following:

"Friday, December 16, 1825. The Board met this day pursuant to adjournment. Present, the Hons. Davis Floyd and William H. Allen. The following claims were this day reported to Congress for confirmation, viz., Teresa Rodriguez, for five thousand five hundred acres.

The taking of testimony herein was here continued subject to further notice.

249 And the taking of testimony in said cause was resumed, pursuant to notice previously given therein at the office of the Special Master, in Orlando, Florida, at 10 o'clock A. M. on Monday, February 8th, 1909.

Present, Messrs. Jones & Jones and W. W. Dewhurst, Esq., attorneys for the complainants; J. C. Cooper, Esq., and E. E. Haskell, Esq., of attorneys for the defendant, and the said Special Master.

And thereupon the following testimony was taken.

One E. P. McCOLLUM was called as a witness for the complainants, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Will you please state your name, age, residence and occupation?

A. E. P. McCollum. I am now at Tavares. My age is twenty-six—I will be twenty-seven in this month.

Q. What is your occupation?

A. Turpentine operator.

Q. How long have you been engaged in the turpentine business in Florida?

A. Why, I have only been in business a little over five years. I have been working on turpentine business ever since July, '99.

Q. What was your occupation in July, 1899?

A. I went to Sorrento and went to work with Mr. Overstreet in the turpentine business.

Q. Well, in what state and county?

A. In Sorrento, Lake County, Florida.

Q. Were you working in Township 19, Range 28, in 1899?

A. Why; yes, sir. I did some work in there.

Q. Were you working in the vicinity of the grant, the Teresa Rodriguez Grant, Section 37, Township 19, Range 28, at that time?

A. Why, I was working near the old grant, yes, sir; but the section was not 37, it only run to 36.

Q. Were you acquainted with that tract of land?

A. Yes, sir.

Q. You haven't stated what you were doing in
250 1899?

A. Well, I worked around at 'most anything, until in the fall, and then I tended the boxes in the woods.

Q. Were you out through the woods in 1899?

A. Yes, sir.

Q. And out through the woods in that vicinity?

A. Yes, sir.

Q. Did you go on this tract of land, this Spanish grant to Teresa Rodriguez, at that time, 1899?

A. Yes, sir; I did.

Q. How much of it did you go over at that time?

A. Well, it was mostly across the west end, and some down on the south side.

Q. How much of it did you go over at that time, a large portion of it?

A. Well, I have been all the way across the west end of it, and about a mile or probably two miles going east. We cut boxes adjoining it, on the south of the grant.

Q. What did you find to be the character of that land?

A. Well, it was pine woods, open pine woods—and the bay—I never did go into the bay.

Q. Do you know how much of it the bay covers?

A. No, sir; the bay covers a big portion of it, though.

Q. What is the nature of this bay, is it a swampy tract?

A. Yes, sir.

Q. Just state what the character of that bay that you speak of is?

A. Well, the only portion I have ever been in is just a swamp. I have never been all the way through it.

Q. It is a swamp?

A. Yes, sir.

Q. In 1899 was any part of this land cultivated?

A. No, sir.

Q. It was entirely unoccupied?

A. Yes, sir.

251 Cross-Examined.

By Mr. Haskell:

Q. Mr. McCollum, did you make any special examination of this land?

A. No, sir; no more than just going across it to my work and so on.

Q. Were you ever on this land more than this once?

A. Yes, sir.

Q. How many times?

A. Why, I couldn't say. A number of times.

Q. For what purpose?

A. Well, I used to have to go across it to go to my work, very often.

Q. For no other purpose other than incidental to your work?

A. Well, I have been out to the spring on it, just for pleasure.

Q. You say that this land wasn't occupied. You mean by that that the lands you saw were not occupied? Is that what you mean to say about it?

A. Yes, sir.

Q. As a matter of fact, did you make any examination of any other portion of this property to see it for that purpose at all?

A. No, sir.

Q. Then, as a matter of fact, you don't know it was not occupied, only as to the property you went over? You didn't see any occupation of that?

A. No, sir; and I always understood there was not. There was no one on that portion.

Q. What understanding did you have from neighborhood report in reference to the ownership or claim of ownership and possession of that property at that time?

To which question complainants object, on the ground that same is not proper cross-examination, and because it is immaterial and irrelevant.

A. I only knew it as the Spanish Grant.

Q. State whether or not you had information at that time of this property being in charge of any person, for certain parties, and if so, who?

A. At that time I didn't.

Q. Did you make any inquiries for that purpose?

A. No, sir.

Q. Then, you had no reason to inquire as to the
252 ownership or possession of that property, whatever, did you?

A. No, sir.

Q. As a matter of fact, the lines of this grant were clearly marked, were they, on that west end?

A. Well, the best I remember of it, there is a little difference in the lines on the west end there, there are two corners.

Q. How far apart are these corners?

A. I should judge about sixty yards.

Q. A couple of hundred feet, something like that?

A. Something like that.

Q. When working the lands for Mr. Overstreet, the lands adjoining this grant, to what lines did you work?

A. To what line?

Q. Yes. Did you work up to the grant line?

A. Yes, sir; on the south side.

Q. How about the west side?

A. Well, we worked some on the west side.

Q. Up to the grant line?

A. Yes, sir.

Q. How long did you work there for Mr. Overstreet?

To which question complainants object, on the ground that

the time about which the witness was asked on direct examination was limited to 1899, and on the ground that the question is immaterial and irrelevant.

A. Why, I worked for him up to the time he died, in 1905.

Q. State from what time to what date, in this vicinity, you were thus at work for Mr. Overstreet?

To which question complainants object, on the ground that the time about which the witness was asked on direct examination was limited to 1899, and the question is immaterial and irrelevant.

A. Why, he died in August—July or August.

(Question read to witness at request of counsel).

253 A. I commenced in July—the 17th, I think, was the date, 1899, and he died in August, 1905. I don't remember exactly the date.

Q. State whether or not of your own knowledge there was any person in charge of this property during any of this time, and if so, who that person was?

To which question complainants object, on the ground that the time about which witness was asked on direct examination was limited to 1899, and the question is immaterial and irrelevant.

A. From 1899 to 1905?

Counsel:

Yes.

A. Why, there was a party, I understand, there looking after the lands.

Q. The grant lands?

A. Yes, sir; the grant lands. That was Mr. Boykin. And he did put up a little house on it and stayed there some nights, just how much I don't know. Occasionally, he would go down there and spend the night.

Redirect Examination.

By Mr. Dewhurst:

Q. Please state the date when this shanty which you say Mr. Boykin built was built?

A. Why, I don't know exactly the date, but I think it was about 1902 or 1903.

The Witness:

And there is one date I would like to correct, as to the time I was working for Mr. Overstreet. I made a mistake. He died in 1903.

Recross Examination.

By Mr. Haskell:

Q. When did you first know of Boykin being in charge of this land?

A. About the time he began to put up the shanty.

254 One T. B. LANIER was then called as a witness for the complainants, and, being duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Please state your name, age, residence and occupation?

A. T. B. Lanier; Tavares, Lake County, Florida; age, fifty-three.

Q. And occupation?

A. My occupation has been working for the lumber and turpentine men, locating land, buying lands and such as that, at present, and I have been for the past four or five years—ten years, probably.

Q. Ten years?

A. Yes, sir; all over the county.

Q. State whether or not you have been selecting lands for turpentine men?

A. Yes, sir.

Q. Does that necessitate your going over the lands and making personal examinations of them?

A. Yes, sir; oh, yes, sir.

Q. State whether or not you have made personal examination of the lands in Township 19, Range 28?

A. Yes, sir; I have been over 19-28 at various times.

Q. How much of that township are you familiar with?

A. Well, with the greater portion of it. There is a great deal of government land there, and I have bought a great deal of government land for people there, and located homesteads for different men.

Q. How long have you resided in the vicinity of this land?

A. I have been there for about fifteen years, and in the state about forty-two years.

Q. I refer to Section 37, Township 19, Range 28.

A. Well, I have been near there for about fifteen years.

Q. Have you known about this grant of land during that length of time?

A. Yes, sir; nearly ever since I have been there.

255 Q. What is the character of this grant of land, Section 37?

A. Well, it is like all other land in that country, some high pine, some low pine and some what we call bay—what I call bay—it is different from swamp. (It is all swamp, of course, but I generally designate swamp as cypress) and bay is low, wet land.

Q. About what portion of this grant is bay or wet lands?

A. I should judge from what I have seen of it, that it would be at least a third of it.

Q. One-third of it?

A. Yes, sir.

Q. Were you familiar with this land in 1895?

A. Yes, sir.

Q. State whether or not in 1895 any portion of this land was under cultivation or occupied.

A. I never have seen any cultivation on it or any house on it, only lately. There was no house or any cultivation, then.

Q. Was there any occupation, whatever, in 1895?

A. Not that I know of.

Q. The land was wild?

A. Wild and uncultivated.

Q. Was it wild and unoccupied?

A. Yes, sir.

Q. Were you familiar with this land in April or May, 1907?

A. Yes, sir.

Q. State what its condition was at that time with regard to cultivation or occupancy?

A. I have never seen any. It was neither cultivated nor occupied, then.

Q. It was neither cultivated nor occupied at that date?

A. No.

Q. Does your business as selector of lands for turpentine people take you about this land?

A. Yes, sir; it takes me through it passing through it in various ways. We have a great deal on each side of it—on all sides.

Q. In 1895, how much of the land were you
256 familiar with?

A. Oh, I couldn't say, positively. I would pass through it at different places, you know, all through it.

Q. And in May, 1907, had you been passing through it?

A. I found it in the same condition it was before.

Q. Had you been passing through it then?

A. Yes, sir.

Q. How often?

A. Oh, I couldn't say that, hardly. Every few months, probably, we would have a call to go out there in that territory.

Cross-Examined.

By Mr. Haskell:

Q. Mr. Lanier, how near this land have you resided during this period of ten years that you speak of?

A. Fifteen years, I said. I have been there nearly fifteen years, at my present location, at Tavares, and it is about twelve miles, probably, the way the road goes.

Q. You mean to say you have lived in Tavares during all that time?

A. Yes, sir; that is my home, my headquarters.

Q. Then, what visits you have made out in that vicinity have been the result of employment to go out and look at lands?

A. Yes; government land and any land around.

Q. Your investigation, then, as to this particular land has been only incidental to the main purpose of your visits?

A. Yes, sir.

Q. State whether, as a matter of fact, Mr. Lanier, you have ever been employed to go upon this particular land for any purpose to find out or report any of its characteristics?

A. No, sir; I have never been employed at all on that land for anything.

Q. Do you mean to say as your testimony in this case that you state, then, as a fact, that this land was nor [not] occupied in 1895, nor was it occupied in 1907, by any person or persons?

A. I have never seen an occupant on it.

257 Q. Then, you really mean to say that you have never seen anybody occupying this land when you have been upon it these times that you spoke of?

A. No, sir.

Q. You don't mean to say it hasn't been occupied and might not have been occupied, and still you never see it?

A. I have never seen it if it was. I don't know any more than that. It is understood it was not occupied, of course, but that is only the general understanding.

Counsel for defendant moves to strike all that part of the foregoing question which undertakes to state the general understanding as to the occupancy of these lands, on the ground that same is not responsive to the question.

Q. State whether you have ever been upon this land for the purpose of determining what its status as to occupancy was, particularly in 1895, and state how often in 1895, in fact, how many times you were upon this land for any purpose, whatever?

A. I never was upon that land for any purpose whatever, only simply crossing through it to hunt other lands.

Q. State as definitely as you can, Mr. Lanier, how many times you were on this land for any purpose in 1895?

A. I couldn't state that, sir, I don't remember. I am out all the time or nearly so, in different parts of the county, and sometimes two or three times in a week I might be through it and sometimes not.

Q. Are you certain you were on it often in 1895?

A. Yes, sir; at different times.

Q. More than once?

A. Yes, sir; probably so. I couldn't tell you how many times. I know it was more than once, but I couldn't tell you how many.

Q. Then, it is only a matter of general recollec-
258 tion you have in regard to this land?

A. Yes, sir; I have never found on this land any occupant.

Q. Does the same character of testimony of your [yours] apply to your visits in 1907, in April or May, as to the preceding visits?

A. Well, in 1907 I was simply through it, as on other occasions, passing through it, backwards and forwards.

Q. Can you remember definitely being upon that land in the month of April or May, 1907?

A. I could not, sir. There is nothing to refresh my memory about the certain months.

Q. Have you made any memoranda of your own by which you could refresh yourself as to the time of your visits?

A. I might by looking over some papers in the office at Tavares. I have none with me. There were different transactions that took me out there.

Redirect Examination.

By Mr. Dewhurst:

Q. Mr. Lanier, you stated in your cross-examination that you couldn't say definitely that you had been over this land in April or May, 1907. Please state whether or not shortly prior to or shortly after April or May, 1907, you were over this Rodriguez Grant or in the vicinity of it?

A. Well, as I stated before, I couldn't say exactly what months or days.

Q. I say shortly before or after that time?

A. I couldn't locate any date now, there is so much of that work that I did from one end of the county to the other that it passes out of my mind.

Q. Were you selling or locating lands in that vicinity at about that date?

A. Yes, sir.

Q. In the spring of 1907?

A. Yes, sir; at about that date, about those times I was through there.

259 Q. Now, have you any data with you by which you could refresh your memory as to whether you were locating lands about this Teresa Rodriguez Grant in the spring of 1907?

A. None with me.

Q. How lately have you been locating lands in the vicinity of that tract, public lands?

A. It has been two or three years, I think, since I have—two years or more.

Q. And two or three years ago were you locating public lands in that vicinity?

A. Yes, sir; two or three years ago I have been in that vicinity on calls of that kind.

Q. Were these government lands close to this grant?

A. Not right close, no, sir; they were back on each side of it, both south and east.

Q. About how far from the grant?

A. About a mile or such a matter.

Q. And to reach those, did that cause you to pass through these lands?

A. Yes, sir; the grant—what is known as the grant.

Q. What official position do you occupy?

A. I was surveyor of registration of the county for about eight years, and I resigned that and another man was appointed in my place. I have had no official position since that.

Q. Did this official position give you a knowledge of the people there in that vicinity?

A. Yes, sir.

Q. And their occupations?

A. Yes, sir; I can tell you the occupation of any man in the county, and tell you his name. I have been there forty-two years.

Q. But your knowledge of this particular grant has been derived from your occupation as selector of lands for turpentine people in that vicinity, has it?

A. Yes, sir.

260 One B. M. ROBINSON was then called as a witness for the complainants, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. Please state what official position you occupy, Mr. Robinson?

A. I am clerk of the Circuit Court of Orange County, Florida.

Q. (Handing witness paper). Please state whether or not that is a true and correct copy of what appears to be transcribed in Book D, page 277 and 278, of the official records of your office.

To which question defendant objects, on the ground that same is an incompetent and unauthorized method of attempting to prove a copy of a record.

A. No, sir; it is not true and correct. It is not complete.

Q. Please explain in what respect it differs from the original record in your office.

To which question defendant objects, on the ground that same is an incompetent and unauthorized method of attempting to prove such records.

A. This instrument is supposed to be a deed. It is recorded in Book D, pages 277 and 278, June 27th, A. D. 1855. "Arthur Ginn, Clerk." (Referring to book in question).

Q. What you have just read, beginning with the word, "recorded" and ending with the word "clerk," appears to have been transcribed on the record after the contents of the paper you have been handed, does it not?

A. Why, it is a matter of fact, yes, but in recording a deed the clerk is supposed—and it is his duty—to give the date of filing and recording and signing, at the bottom of each deed—at the end of each instrument.

Q. State whether or not the paper handed you is
261 a true and correct copy of what appears as transcribed on page 277 and page 278, except only the words beginning with "recorded" and ending with "clerk"?

A. Well, I did interline, here, "whatsoever," I believe. (Pointing to interlineation in paper in question).

Q. In its present condition, I mean?

A. In its present condition it is a copy of what I find to be on pages 277 and 278, of Deed Book D.

Q. State whether or not that purports to be a deed of John Simpson, Sheriff, to John Stark?

A. Well, I supposed it to be a deed until I heard you discussing it and saying it was not admissible to record. I don't know whether it is a deed or not, now.

Counsel for complainants offer in evidence the paper or copy in question, limiting the purpose for which it is offered in evidence to that of showing the character of the instrument, and also to show the years for which the sheriff attempted to levy execution for alleged unpaid taxes on the land in controversy.

And defendant objects to the introduction of said paper, on the ground that same is uncertified and is incompetent and unauthorized as evidence, and because it is shown by the testimony of the witness that it is not a complete copy of all the subject matter of this conveyance as shown upon the record, and because it is not competent to limit the purpose of its introduction as stated.

Whereupon, the said copy or paper was filed in evidence as Complainants' Exhibit No. 19, and is hereto attached and made a part of this report.

Direct Examination Continued.

Q. The words, "Recorded in Book D, pages 277 and 278, June 27th, 1855, Arthur Ginn, Clerk," were those any part of the original instrument as presented to the clerk?

A. I don't know.

Q. Is it customary for a clerk to put "recorded" on a deed, prior to its record, Mr. Robinson?

A. I never did.

262 Cross-Examined.

By Mr. Cooper:

Q. Do these words, "Recorded in Book D, pages 277 and

278, June 27th, A. D. 1855, Arthur Ginn, Clerk," follow immediately after the record of the paper that you have been talking about, and prior to the record of another purported record following?

A. Yes, sir.

Q. Are there similar words to these that I have just read following the record of other instruments in this book, just before and after this one?

A. Yes, sir; I haven't examined a great many of them, but I did examine some.

Q. Does that appear to be the method of indicating the clerk's certificate of record of instruments in that book?

A. Yes, sir; it does.

One J. H. JONES was then called as a witness for the complainants, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Dewhurst:

Q. It is in testimony that the list of descendants from Teresa Rodriguez and Miguel Marcos which has been filed in evidence in the testimony of Mr. Sariol was prepared by you, under the direction of Mr. Sariol. Please explain the abbreviations which follow the names of parties in that list.

To which question defendant objects, on the ground that same is incompetent and irrelevant.

A. (Referring to list in question). That list in evidence, which is the list which I hold in my hand has after the several names, and in front of some of the names bracketed, abbreviated words or letters.

Q. Please state what they are, Mr. Jones.

263 To which question defendant objects, on the ground that same is incompetent and irrelevant.

A. They are abbreviations of Spanish words.

Q. Please state what the abbreviations are?

To which question defendant objects, on the ground that same is incompetent and irrelevant.

A. After the words, "Teresa Rodriguez," in brackets, are the two letters "mu," which mean "muerto" or "dead."

Q. Go ahead and state what all the other abbeviations are, before you explain them?

To which question defendant objects, on the ground that same is immaterial and incompetent and irrelevant.

A. "m" in brackets, mean "Marido" or "married." "s" in brackets is for "soltero" or single. "muss' in brackets is "muerto sin succion," which is "dead without succession" or "leaving no heirs," that is, "without direct heirs." The letter "v" in brackets means "widow."

Q. Can you state from this list as prepared under Mr. Sariol's directions who are the living descendants of each of the three children of Teresa Rodriguez?

To which question defendant objects, on the ground that same is incompetent and irrelevant, and is an improper method of proving pedigree.

A. Yes, sir.

Q. Please state who appear from this list to be the living descendants of the three children of Teresa Rodriguez, naming the descendants of each separately, as they appear from this list.

264 To which question the defendant objects, on the ground that same is incompetent and irrelevant, and is an improper method of proving pedigree.

The Witness:

Dropping that for the moment. I would like to go back to the last explanation and state that the word, "herederos" means children.

A. (To last question). The following persons as appears from the list are the descendants:

Felix Genaro Marcos y Diaz, who is a grandson of Teresa Rodriguez.

Miguel Marcos y Acosta, Rodolpho J. Marcos y Acosta, America Marcos y Acosta and Josaphina Marcos y Acosta; great-grandchildren of Teresa Rodriguez.

Manuel Codina y Pechardo, Urbano Codina y Pechardo, Adela Codina y Pechardo, Genaro Codina y Pechardo, Amparo Codina y Pechardo, great-great-great-grandchildren of Teresa Rodriguez.

Maria Carmela Garcia y Pechardo, Rafaela Garcia y Pechardo, Lorenzo Garcia y Pechardo, Estaban Garcia y Pechardo, Luis Felipe Garcia y Pechardo; great-great-grandchildren of Teresa Rodriguez.

Miguel Garcia y Alvases, Alfonso Garcia y Alvases, Ricardo Garcia y Alvases, Luis Garcia y Alvases; great-great-grandchildren of Teresa Rodriguez.

Juan Bautista Marcos y Diaz, Rafael Marcos y Diaz, Flora Marcos y Diaz Belin; great-great-grandchildren of Teresa Rodriguez.

Maria del Carmen Garcia Pechardo y del Pozo, great-great-grandchild of Teresa Rodriguez.

Ricardo Garcia y Ochandarena, Gertrudis Garcia y Ochandarena, Maria Teresa Garcia y Ochandarena, great-great-grandchildern of Teresa Rodriguez.

Ladislao del Pozo y Arguelles, great-great-grand-
265 child of Teresa Rodriguez.

Maria Martinez y Pozo, Maria Liuisa Martinez y Pozo, Martin J. Martinez y Pozo, great-great-grandchildren of Teresa Rodriguez.

Amelia Nunez del Pozo, Ernesto del Pozo, Alfredo Nunez del Pozo, great-great-grandchildren of Teresa Rodriguez.

Arturo Nunez y Valdez, great-great-great-grandchild of Teresa Rodriguez.

Dolores Fabre del Pozo, Concepcion Fabre del Pozo, Rosa Fabre y del Pozo, Maria Regla Fabre y del Pozo, great-great-grandchildren of Teresa Rodriguez.

Maria Fabre, Horacio Fabre, Raul Fabre and Amparo Fabre, great-great-great-grandchildren.

Maria Louisa del Pozo and Christina del Pozo, great-great-great-grandchildren of Teresa Rodriguez.

Caridad Del Pozo y Abrue, Pilar del Pozo y Abrue and

Maria de los Angeles del Pozo y Abrue, great-great-grandchildren of Teresa Rodriguez.

Defendant moves to strike all of the testimony of this witness, including the testimony given from said list, on the ground that same is incompetent and irrelevant and not the proper method of proving pedigree.

It is stipulated and agreed by the solicitors for the complainants and for the defendant that complainants will rest their testimony at this point, with the exception that they reserve the right to put in documentary evidence and its proof, as to pedigree, and with the further exception they are to take the testimony of one A. J. Driggers, whose testimony it is agreed may be taken to precede the taking of
266 the testimony of the defendant at a later date. It is further agreed that counsel for the complainants reserve the right to introduce in evidence a certified copy of the decision of the Secretary of the Interior relating to the claim of title of Teresa Rodriguez to the lands in controversy.

It is further agreed that if the defendants find that they require further time, a reasonable extension of time will be consented to beyond the present extension of time for taking this testimony.

The taking of testimony was here continued, subject to further notice.

Feb. 25, 1909.

It is here noted by the said special master that Messrs. Cooper & Cooper, of counsel for the defendant, by their letter dated February 22nd, 1909, requested the said special master to continue taking testimony in said cause, and give notice of such taking at Sanford, Florida, on March 3rd, 1909, for the purpose of taking testimony of the defendant; that said master received said letter while in Fort Pierce, Florida, on February 24th, 1909, and telegraphed Messrs. Cooper & Cooper that he would be unable to take testimony as requested on March 3rd, 1909, for the reason that he expects to be at that time engaged in court work in Miami, Florida, and will probably be unable to leave Miami for some three weeks.

It is further noted that Messrs. Cooper & Cooper, immediately upon receipt of said telegram, requested said master

by their letter dated February 24th, 1909, to enter an order upon the record fixing the earliest date possible for the taking of said testimony.

267 March 23, 1909.

It is here noted on the record that on March 5th, 1909, the defendant, by counsel, requested the special master to set the 23rd of March, 1909, for taking testimony of the defendant in said cause, and that such testimony is not taken at said date because of the master's inability to do such work at this time.

And on Monday, April 12th, 1909, pursuant to notice previously given, the taking of testimony in said cause was continued, at the Sanford House, in Sanford, Florida, as follows:

Present, Messrs N. W. Dewhurst and Joseph H. Jones, of counsel for the complainants; Messrs. J. C. Cooper and E. E. Haskell, of counsel for the defendant, and the said Special Master.

Thereupon, the following testimony was taken on behalf of the defendant:

One WILLIAM P. LASSITER was first called as a witness for the defendant, and, being duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Please state your name?

A. W. P. Lassiter.

Q. And your age and place of residence?

A. I will be sixty-two in December. I was sixty-one last December. I live at Fort Pierce.

Q. Florida?

A. Yes, sir.

Q. Where did you reside in the first part of the year 1872?

To which question complainants object, on the ground that same is immaterial and irrelevant.

A. In the first part of the year I was living at Oviedo or Lake Jessup, and then moved from there to this grant in '72. I think it was about March, about March, I think, somewhere about the first of March in '72, we moved to this grant, my wife and I.

Q. Do you know of your own knowledge the
268 property and premises commonly known as the Teresa Rodriguez Grant, sometimes called the Powell Grant and known on the United States surveys of the public lands as Sections 37 in Township 19, south of Range 28, East, and Section 41, in Township 19, south of Range 29, East, comprising a tract of 5486.46 acres, situated now in Lake County, formerly in Orange County, Florida?

A. I do.

Q. Is that the property you had reference to when you say you moved on this grant about March, 1872?

A. It is.

Q. State how you came to go there and after getting there what was done with this property?

To which question complainants object, on the ground that same is immaterial and irrelevant.

A. My wife's father bought it from Mr. Mills.

Q. Give the names in full?

A. George C. Powell, my wife's father, bought it from Mr. Billy Mills, at Apopka City. (It was then known as Apopka). Then Mr. Powell wanted me to go here with him, so myself, my wife, Mr. Powell (the old gentleman, George C. Powell) and my brother-in-law, George W. Powell, went there somewhere about March, 1872, and settled, built us a shack on the north side of the mill pond—you might say north of the spring; it was nothing then but the springs. And we built it out of palmetto, right close down, fifty or a hundred yards from the swamp.

Q. Go on, Mr. Lassiter.

A. After we got there we made improvements, cleared up some land, planted sweet potatoes, garden stuff, a few orange trees. And that summer we went to work on the mill, getting out the mill timbers. Of course, we had to fix to have something to eat before we went to work on that—we had to live

as we went along. And that summer we got out the mill timbers and built the mill.

Q. State whether you built a mill dam?

269 A. Yes, sir; we built a dam, built a mill-house and a mill-dam.

Q. What sort of a mill did you build there?

A. We had a saw and grist mill and two gins.

Q. For ginning cotton?

A. For ginning cotton, yes, sir; and a grist mill to grind corn or wheat or oats or anything.

Q. When did you get the mill to running?

A. I think that we got it to running some time the next year, along in the latter part of the summer. I know we got the gins to running for the next fall's cotton crop, and we got the grist mill running in the summer time, some time.

Q. What year would that make it?

A. That would make it in '73.

Q. Did you plant any crops in '73?

A. Yes, sir; we planted sweet potatoes, peas, watermelons, cabbages, turnips, a little corn.

Q. How many farms did you improve there, or make and cultivate?

A. Three.

Q. Whose farms were they, who for?

A. George C. Powell, George W. Powell and myself.

Q. Where did you get the timbers and materials for building the mill-dam and the mill?

A. Off of the grant.

Q. This same property?

A. Yes, sir; that same property.

Q. Relatively to the mill, where did you get this timber from?

A. We got the most of it on the north side of the mill. There happened to be a good body of timber that was right close to the mill; it wasn't very large, but it was large enough for mill purposes.

Q. What was the span of the mill-dam?

270 A. I think it was something over a hundred yards.

Q. Something over a hundred yards?

A. Yes, sir; as well as I remember, I think that is what it was.

Q. Did you throw that up with abutments and so forth?

A. No, sir: we filled that up with dirt.

Q. Dirt?

A. Yes, sir.

Q. How wide was the mill race?

A. We put in a waste—what was called a "tumbling dam" on the north side of the mill. I disremember now how wide that was. I hardly know what to say about that, whether it was fifteen or twenty feet, but we built it sufficient to take the waste water away, what we couldn't use in the mill.

Q. How large a structure was the mill itself?

A. I think it was fifty or sixty fet one way and forty or forty-five, probably, the other, maybe not so much.

Q. One or two stories high?

A. To count from the ground it would have been two stories, but there was only one story that I count, where the water was. Of course we had to lay a foundation, make what was called the foundation, and then put in upright posts in that foundation, and then on top of that we built the main mill house, that is, for the work—the gins, saw and grist mill.

Q. That mill was operated as a saw mill?

A. Yes sir.

Q. What became of the lumber that was made?

A. We sold it around there through the country, and shipped some of it here to Sanford.

Q. Where did you get the logs from that you sawed from in the mill, and what kind of logs did you saw?

A. We got pine timber right there off the grant. It was called yellow pine.

271 Q. Where did you lumber that timber from?

A. The timber?

Counsel:

Yes.

A. We lumbered it off the grant to the mill house, or to the mill pond.

Q. Do you know anything about these things? Did you do any of the lumbering yourself?

A. I did.

Q. What work did you do there particularly?

A. I done the hauling of the logs and the chopping of them, sir.

Q. You chopped the logs and hauled them to the mill?

A. Yes sir.

Q. Did you know the boundaries of this grant property?

A. Well, I suppose I did, I knew where Mr. Powell had showed me the boundary lines.

Q. Mr. Powell, your father-in-law, showed you the boundary lines?

A. He showed me the boundary lines.

Q. You cut all this timber within the boundary lines?

A. Yes sir, I cut that timber within those boundary lines.

Q. What is the actual character of the land, what is the eastern part of that grant, say about the east half of it?

A. It is swamp.

Q. Heavy swamp?

A. Yes sir.

Q. What about the western half, toward the south-west-there?

A. It is pine, pine timber and rolling pine land.

Q. That is where these improvements were made, on the pine land?

A. Yes sir. Well, my brother-in-law, George Powell, had a hammock clearing up right close to his house. He settled right on the edge of the hammock, and then cleared him up a field in the hammock.

Q. What did he put on this hammock land?

A. Well, he planted Irish potatoes, peas, beans, cabbage, and he put some orange trees on it.

272 Q. To what extent did he make an orange grove there? How large an orange grove did he have?

A. I don't know, sir, I couldn't say how many trees he planted out, because I moved away from there in '73, in the latter part of '73. But he had somewhere between fifty and a hundred, I suppose, planted out—maybe not so many.

Q. What part of the grant were these farms that were cleared up? What part of the grant were they?

A. Well, they was, I think, somewhere in the neighborhood of a mile from the boundary line.

Q. Going south?

A. Yes sir, going south. There was one of them on one side of the mill stream and two of them on the north side.

Q. Whose place was on the south side of the mill stream?

A. My father-in-law's, George C. Powell. Mine and George W. Powell's were on the north side.

Q. After you moved away did you go back to the old folks occasionally?

A. I did.

Q. How often?

A. Sometimes once a month.

Q. Regularly? You made regular visits to the old people?

A. Yes sir.

Q. Then what did they do after you moved away from there, in the matter of the cultivation of these farms?

A. They kept them cultivated.

Q. "They"? Who were "they"?

A. George Powell, and his son George W.—George C. Powell and his son George W.

Q. Were they any other parties there, after you went away, that cultivated and improved any portion of that grant, to your knowledge or recollection, or used any portion of it?

A. Well I don't know—well, yes, after the grant was sold there was other parties that cultivated those same farms, and made some improvements on them.

Q. Sold to whom?

A. Sold to Sanford—or after it was mortgaged to Sanford.

273 Q. Do you know a man named William Slade?

A. Yes, sir, I do.

Q. Who is he?

A. He is a brother-in-law of mine.

Q. Do you know whether he ever went on that grant or not?

A. He did.

Q. When did he go there, how long after you left?

A. Not a great while after I left. I think he went there in '73, as well as I remember.

Q. It was about the time you left, soon after?

A. It was pretty soon after I left.

Q. What relation was he, what relation does he bear to you by marriage?

A. We married sisters, George C. Powell's daughters.

Q. Then he is your brother-in-law?

A. Yes sir.

Q. And a son-in-law of George C. Powell?

A. Yes sir.

Q. Did he live on this property himself?

A. Yes sir.

Q. What improvements did he make here, to your knowledge?

A. He run the mill—sawed the timber.

Q. What property did he live on, what part of this grant?

A. He lived on the old man's place.

Q. He lived on the old man's place?

A. Yes sir.

Q. Did they cultivate that place after you went away?

A. Yes sir.

Q. How often did they cultivate it?

A. Well, they had it in cultivation as long as they stayed there, every year.

Q. When did they leave?

A. I carried the old man away from there—I think it was about '82.

Q. How did you come to bring the old man away?

A. Him and his wife was sick, sir, and he wasn't able to take care of himself.

Q. What disposition was made by your father-in-law, George C. Powell, of this property?

274 A. He had mortgaged it to Sanford, and he turned it over to Sanford.

Q. Made him a deed?

A. I don't think he made a deed right at that time, sir, there was some other parties that came along in there that had it, and after a while he did finally make him a deed.

Q. Finally your father-in-law made Sanford a deed to this property and conveyed the property to him?

A. Yes sir, finally he made Sanford a deed to it.

Q. Now you say William Slade ran the mill and lived with the old gentleman on the place?

A. Yes sir.

Q. He and the old man together, in the same home?

A. Yes sir, they lived there together in the same home.

Q. Where did they get the timber from that they used in that mill?

A. They got it off the grant.

Q. They were lumbering that grant?

A. They were lumbering that grant, yes sir.

Q. How long did William Slade remain there running that mill to your knowledge or recollection?

A. Some two or three years.

Q. Did anybody else beside Slade run that mill?

A. George Powell was running it with Slade at the time, and J. F. J. Mitchell and Slade run it.

Q. All of this during the time that George C. Powell owned the grant?

A. Yes sir.

Q. Where did they get their lumber from?

A. They got it off of the land.

Q. What sort of houses did he build on this property?

A. Log houses.

Q. Log houses?

A. Yes sir.

275 Q. Any others besides the house to live in, any barns or anything?

A. George W. Powell had some other outhouses. I think, I didn't, because I didn't have any use for an outhouse.

Q. You and your family lived in the log house you built?

A. Yes sir, we lived in the log house we built. George C. Powell lived in the log house on the south side of the creek.

Q. Where did all these families get their wood, fuel, fence posts and things that thy used in and about the husbandry of those farms?

A. We cut it off that land, sir.

Q. What portions of the grant?

A. Well, you know when a man goes in the woods to split rails he will try to pick the best rail timber he can find, and we picked it promiscuously all about on the north part, the north-west quarter or corner.

Q. Did you have any live stock or cattle, any of your families there, did you have any live stock or cattle ranging around about?

A. We had oxen and some mules and horses.

Q. Where did you pasture those?

A. We pastured them on that grant, and anywhere else that they were a mind to go, when we were not working them; it was all woods.

Q. Did you have any hogs?

A. No sir, we had no hogs.

Q. Did you have any chickens?

A. Yes sir, we had chickens: of course they run around the house, the premises.

Q. State whether, from the time George C. Powell, your father-in-law, went on this property, until you moved him off, any other persons than those he permitted and allowed—he and those to whom he sold—occupied or used any part of these premises?

A. They did not, sir.

Q. Do you mean to say that he had the exclusive control and use and occupancy of this property while he was there? from '72 to '82?

276 A. He did.

Q. Nobody else other than those I have mentioned?

A. That's all, sir.

Q. They were all claiming under him?

A. All under him.

Q. Was there anybody else as long as you were there that claimed anything in that property, or not?

A. They did not.

Mr. Dewhurst:

I object to all these questions on the same ground stated before, that they are immaterial and irrelevant.

Q. By what name was that property generally known in the neighborhood round about, and who was known and understood all the time to be the owner of it and in possession of it?

A. George C. Powell.

Q. And what was it called?

A. The Powell grant.

Q. This property was known as the Powell grant?

A. Yes sir.

Q. What was there on this property when you first went there?

A. There was plenty of timber, pine.

Q. It was virgin forest?

A. Yes sir, virgin forest.

Q. Were there any efforts of any occupancy or use of that property when you went there?

A. There was not.

Q. Then your father-in-law, and you with him, were the first ones to clean up and improve and commence to develop that property?

A. We was.

Q. Do you know who got this property after your father-in-law and his wife went away from there?

To which question complainants object, on the ground that same is immaterial and irrelevant.

A. General Sanford.

Q. General Sanford? That is Henry S. Sanford?

A. Yes sir.

Q. Was there anyone that went on the property to your knowledge after your father-in-law left there, and
277 had control of it? And if so, who?

A. Yes sir.

Q. Who?

A. Mr. George W. Powell had possession of it after I moved my father-in-law off.

Q. How long?

A. Oh, some year, or better. And during the time—now, I don't know that. I can call the man's name—Cliffman, or Clifton—no, that ain't his name, either—

Q. Well state whether or not George C. Powell conveyed certain parts of this grant to other parties.

A. He did.

Q. Can you state who he conveyed them to?

A. I am just trying to call the mans' name now. There was two brother-in-laws of them. I am just trying to call the man's name now.

Q. What part of the grant were they on?

A. On the north side.

Q. On the north of the mill?

A. Yes, on the north side of the mill.

Q. What did they do there?

A. They cultivated it, and run the mill, and run a store there.

Q. They also ran a store there?

A. Yes sir.

Q. And they also ran the mill?

A. Yes sir.

Q. That was after your father went away?

A. Yes sir.

Q. Do you recollect anyone by the name of Smith and Clifford?

A. They are the men. I knew it was Clifford or Clifton—I couldn't get it.

Q. How large a place did they improve on that property?

A. Oh, they must have cleared up probably some three or four acres of hammock there.

Q. What improvements did they make to the land other than clearing it up?

A. They put an orange grove on there.

Q. They put an orange grove on it?

A. Yes sir.

278 Q. There was an orange grove there after your father left there?

A. Yes sir, after we left there.

Q. What was there on the three farms that your three families used? What was done with them after you went away from there?

A. As well as I remember, my father-in-law's place, across the creek, I think it went down: I don't think anything was done with it, except a little patch of it down next to the creek. There was a very rich spot there that they cultivated, I think, for a garden. The place there that I settled was still in cultivation when I went back there.

Q. When was that?

A. Well, I was up there once or twice after '82, after my mother-in-law and father-in-law, George C. Powell, left there I passed through there several times.

Q. After they left there?

A. Yes sir.

Q. Then that place was in cultivation after they left?

A. Yes sir.

Q. How about the George W. Powell place?

A. That was the place that was in cultivation.

Q. George W. Powell took the place you had?

A. No sir, George W. Powell held his own place, and finally sold to Smith & Clifford.

Q. What became of the place you had?

A. I think it all went down, sir, as well as I remember—it has been so long ago. Of course the fence was there, and I

disremember whether they cultivated it or not. Doctor J. F. J. Mitchell, he lived on that place of mine while he was running the mill, and I think he also planted it in peas, and such like.

Q. Was that before or after your father left there?

A. That was after my father-in-law had left there.

Q. Do I understand you to say that all three of these places were cultivated and improved until your father-in-law left?

A. Yes sir.

279 Q. And afterwards as you have stated?

A. Afterwards by different parties.

Q. Have you any interest whatever in this case or those lands?

A. I have not.

Q. State whether or not George C. Powell is living or dead.

A. He is dead, sir.

Q. When did he die?

A. Now I disremember.

Q. About how long after you carried him away from there in '82?

A. Oh, he must have lived probably five or six years, maybe more, or maybe not so much. I disremember exactly how long he did live.

Q. Several years?

A. He lived several years, yes sir, he lived several years.

Q. William Slade is still alive?

A. He is—or was.

Q. George W. Powell, is he still alive?

A. He was a little while back, sir.

Q. Do you know where George W. Powell is living now?

A. I think he is living at Liveoak, sir.

Q. Live Oak, Florida?

A. Yes sir, Live Oak, Florida. He lives at two or three different places now. He has some children at Live Oak. He has no permanent place himself now. He is old, and broke up. He has children living at Fort Myers too, and I think he lives at first one place and then another. The last I heard of him he was at Live Oak with his daughter there, Mrs. Wiggins.

Q. How long has it been since you have been on this property?

A. How long since I have been there?

Counsel:
Yes sir.

A. Oh, it must be fifteen years, probably.
Q. Fifteen years ago?
A. Yes sir, about fifteen years ago, probably more. I couldn't exactly say how long it has been since I have
280 been on it.

The complainants here moved to strike all of the testimony of this witness, on the ground that the same is irrelevant and immaterial, and that the facts testified to cover a period during which the complainants were excluded from possession by and under the claim of the United States, claiming said lands as public lands.

Cross-Examination.

By Mr. Dewhurst:
Q. Mr. Lassiter, do you know anything about the occupancy of these lands during the last fifteen years?
A. No sir, I do not, only from hearsay.
Q. And the time you moved your father-in-law away was about 1881, was it not?
A. That was '82.
Q. How long after that was the place that your brother-in-law sold to Smith & Clifford cultivated?
A. Well, sir, I don't know how long it was, it was in cultivation the last time I was there, just passing through there, Smith & Clifford was cultivating it. I don't know how long that was.
Q. About what date was that?
A. Well, I was through that country there in '84 and '85.
Q. In 1884 and '85?
A. Yes sir.
Q. Is that as late as you have any knowledge of it?
A. I think it is, sir. I don't remember—I might have passed through there.
Q. You have no knowledge later than 1884 and '85?
A. I don't remember that I have.

Q. Didn't Slade get a homestead in there?

A. Yes, he got a homestead west of the grant, not on the grant.

281 Q. Did you help clear up the homestead?

A. No sir I did not.

Redirect Examination.

Of [By] Mr. Haskell:

Q. Mr. Lassiter, where did you come from when you came to testify?

A. From Fort Pierce.

Q. From Port Pierce, Florida?

A. Fort Pierce, Florida, St. Lucie County.

Q. How did you come?

A. I came by Titusville and Enterprise.

Q. When did you leave there?

A. I left on the ten o'clock train last night.

Q. When can you get home?

A. I can get home tomorrow. That would be the earliest I could make it.

One F. H. RAND was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Please state your name, age and residence.

A. Frederic H. Rand, residence Longwood, Orange County Florida; I am between sixty-three and sixty-four years old.

Q. How long have you resided in Orange County, Florida?

A. Thirty-three years.

Q. What official connection, if any, did you have with the Florida Land and Colonization Company?

A. I was its general manager and attorney in fact.

Q. What did you have to do with its lands in Florida?

A. I sold them, or improved them, handled them in any business way. I had complete control of them.

282 Did you have to do with the management and possession of them?

A I had the possession of all of them.

Q. Did you have a written power of attorney as the representative of the company?

A. I did.

Q. When did you come into control and managament of the lands of that company?

A. In 1887.

Q. Do you remember about what time in 1887?

A. It was in the spring. I think in the month of February; I am quite positive it was in the month of February.

Q. State whether or not you know the property commonly known as the Powell grant, or the Teresa Rodriguez grant, designated on the United States survey of public lands as Section 37, Township 19, south of Range 28 East, and Section 41, Township 19, south of Range 29, East.

A. I will not be positive from my recollection as to the township and range, but I know the property and have been in possession of it for the company. I held possession of for the company.

Q. For what company?

A. The Florida Land and Colonization Company.

Mr. Dewhurst:

Complainants move to strike all that portion of the witness' answers saying that he has been in possession of the lands in controversy, on the ground that such statement is a conclusion of law.

Q. During what years was the company in possession of this particular property?

To which question complainants object, on the ground that same seeks to elicit a conclusion of law, and is improper.

Q. (Continued) And what control did they have of the property? State the facts.

283 Same objection as above.

A. The company had control of this property for some years previous to the time when I became manager of the company, I think from 1882—I am quite positive it was from 1882.

It remained in the company's possession up to the time that I conveyed the same to the Wilson Cypress Company, I think about 1900. The acts of control or possession which I exercised were building a house upon the property, cultivating land upon it, keeping men in possession of it for a number of years, selling timber from it and paying taxes on it.

Q. In connection with your acts, what agents, and who, and when were they there, that you had upon this property during this period?

A. I had one man named Carlton Jones. I think Carlton Jones was the first man in possession. And that, (I am a little hazy on my dates), I think was about '88 or '89. It may have been the latter part of '87, or the early part of 1888. He was succeeded by a man named Thomas. Thomas' first name I can't give you.

Q. State whether or not it was Ed Thomas.

I. [A.] I should be afraid to state the name. It was simply a man who had been in my employ for years, and when he went out there he was sent out there to relieve Jones. I simply remember the name Thomas. There was another man named Boykin who was there for quite a long time. Boykin I think was the last man in possession, and was there at the time when it was sold to the Wilson Cypress Company. There was one other man between Boykin and Thomas.

Q. State whether or not a man by the name of Wofford was there?

A. Wofford was the man. Those are the only ones I recollect. I think there was another man there at one time.

Q. State whether or not a man by the name of
284 McIntosh was on there at any time, or one by the name of Figg.

A. I don't remember those names, sir. I think there was another man besides the men that I had named, but I don't recollect the name.

Q. You stated in the statement above that your company sold timber off of this grant. State to whom you sold timber, and when, if you recollect.

A. We sold to a man named Royal, for one. There was another man, I think his name was Anderson. He was a colored man. Those two I recollect. I think that at another time, as I recollect it, there was some timber sold to John

Sauls, of Enterprise. I am not positive about that. But the other two I am certain of.

Q. State whether or not your company under your direction had this property surveyed?

A. Yes sir, they had several surveys made on it, different portions of it, and the whole.

Q. Fix the time, if you can.

A. Some time between 1887 and '90, I think, there was several surveys made at various places between those times, in the latter portion of the '80's between 1887 and 1890.

Q. Who did this surveying for you?

A. William Beardall.

Q. Where is William Beardall now?

A. He is dead.

Q. When did he die?

A. About two years ago, I think.

Q. Who was Mr. Beardall and what was his business and connection? Where did he reside?

A. He was a civil engineer and surveyor by profession, and was chief clerk in my office, took charge of the tax matters, and the general surveying of the lands and the descriptions and so forth, and resided in Sanford, and was in my employ for fifteen odd years.

Q. What had been his employment, to your knowledge, prior to your taking possession of this property?

285 A. He had been a surveyor and civil engineer for the same company in their interests in East Africa.

Q. Was he connected with this company prior to your connection with it?

A. He was.

Q. What was his position?

A. Assistant agent.

Q. Who was the agent?

A. E. R. Trafford.

Q. Is Mr. Trafford living?

A. He is dead.

Q. You say you paid the taxes on this property. State whether or not, for your company, you returned this property for taxes and paid it also?

A. Always. I made a regular return, and paid the taxes.

Q. During what period was this?

A. During the entire period of my control of the company, up to the date of the sale.

Mr. Haskell: (To counsel for complainants.)

We submit to you that we are going to show, or attempt to show, the taxes that were paid on this property by our people. And Mr. Rand has some tax receipts in the usual form, which show for themselves those things, but they also contain a lot of other properties and we can't well take them out of his hands. They are his property. And so we want to put in the fact that the taxes were paid for those years in this testimony, for what it is worth. I didn't know but what you would consent that Mr. Rand make a statement from his tax receipts, and have the Master make copies of that part of it.

Whereupon it was agreed between counsel for the complainants and defendant that such copies be made in the record, and that no objection can be made because of not introducing the original tax receipts in evidence; and it is further agreed that such copies may be made in the record at this time by having the witness call off to the items on said receipts cov-
286 ering the property in question, which is done in the following answers:

Q. Have you the tax receipts, or any of them, showing payment of taxes on this property, during your control of it?

A. I paid taxes regularly from the date that I took control of the company's property, but the earliest tax receipt that I find now among the old papers is that of 1890.

[Q.] For the taxes of what year?

A. For the taxes of 1890, I think it is. This receipt (producing it) is the receipt for Lake County taxes for 1899, and here is a line from the collector of taxes in which he calls our attention to the fact that he had omitted the Powell grant for that year, and in which he says the assessor says he will assess the grant for two years next time. Now, following that, (producing another receipt), comes the assessment for two years as the assessor said.

Q. Just read the year and the number, and the amount.

A. The number of the receipt is 1019. It is for the taxes of 1890, and it says it taxes the Teresa Rodriguez grant, (less sixty acres—a portion of the grant which belonged to Mr.

Pendleton, as I understand—at any rate that was "less." We did not claim that.) But he assessed the property for that year, aad he also says "ditto" for 1899", making two years.

Q. What is the amount?

A. (Referring to receipt) The amount is $30.25.

That is followed by the next receipt I find, which is for the taxes of 1892, covering "all except sixty acres, Rodriguez grant", and the taxes on that is $100.50. The next tax receipt that I have is the tax receipt for Lake County No.
287 4786, for the year 1893. It shows the Rodriguez grant, all except sixty acres, and the total tax is $107.20.

(Witness produces and shows receipt to Master in each case.)

The next is tax receipt No. 2673, for the taxes of 1894, all of the grant except sixty acres, Teresa Rodriguez, $100.51.

All of these receipts that I am referring to are Lake County receipts.

The next is Lake County tax receipt No. 3556, for the taxes of 1896, all of the Teresa Rodriguez grant, less sixty acres, $77.06. That is for the year 1896.

The next is Lake County tax receipt No. 3819, for 1897, all of Teresa Rodriguez grant, less sixty acres, $87.11.

Q. State to whom that is assessed on all of those.

A. On each of these receipts the land is assessed to the Florida Land and Colonization Company.

The next is Lake County tax receipt No. 3278, for 1899, all Teresa Rodriguez grant except sixty acres, $100.50.

Q. Mr. Rand please state whether or not from the time your company took possession of this property until you gave up possession of it to the Wilson Cypress Company, any other persons than those under you and your company were in possession or control of this property.

To which question complainants object, on the ground that same calls for a conclusion of law on the part of the witness, and is improper.

A. No one during the time I had charge of the property, from 1887. As to the time prior to the time I took charge of the property I cannot answer.

288 Q. State, Mr. Rand, whether you know of any

attempt by any parties during that time that you have stated, to go upon this land without your consent, and if so what was done in the premises?

A. Twice there was an attempt to survey the land, and, I was given to understand, to take possession. The parties came while my agents were there and living on the land, and they were orderd away by my agents, and left, were not allowed to come onto the tract or survey it.

Q. When were these attempts made?

A. The first, I would say, about 1889, '88 or '89, soon after I took charge of the company's business. The other, I should think, was along about '93 or '4.

Q. State whether at these particular times your company had persons actually on this property for you and in charge and in possession thereof?

To which question complainants object, on the ground that same is improper, and calls for a conclusion of law.

A. My agents were in possession and living upon the land prior to and at the time the parties attempted to enter them, in each case.

Q. And at the time?

A. And at the time.

Complainants move to strike out the foregoing answer, on the ground that it attempts to state a conclusion of law.

Q. That was about 1889 and 1894?

A. These times were about 1889 and 1894 as well as I remember now. I cannot state exactly. That is the best of my recollection.

Q. State whether or not, Mr. Rand, in a proceeding in rei perpetuam you have heretofore testified in reference to the holdings of your company of this property?

A. Yes, I have given testimony once previous to this time —yes, more than that.

289 Q. I am asking about this particular case.

A. In this particular case once.

Q. Is this the testimony that you gave on that occasion? I now hand you the original testimony and proceedings in that matter, taken by order of the Circuit Court of Lake County,

Florida, on June 26th, 1900, by L. A. Field and R. Kreigman, commissioners. (Handing witness paper mentioned.) I will first ask you if this is your signature (pointing to signature on above mentioned paper)?

A. That is my signature.

Q. Please state whether the testimony given at that time is true.

To which question complainants object, on the ground that same is immaterial, irrelevant and incompetent.

A. That testimony is true.

Cross-Examined.

By Mr. Dewhurst:

Q. What was the character of the occupancy which you term a possession, in your direct testimony, had by Mr. Carleton Jones of the lands in controversy?

A. There was a house built there, and he lived in the house and cultivated the ground.

Q. Where was the house located?

A. I should say it must have been near the east boundary. I cannot give you the exact description of that, because it was located by Mr. Beardall, who was an engineer and surveyor, and not by me. He located it so as to be sure to have it within the boundaries of the grant, but as near to Sanford as possible, so as to enable passage back and forth.

Q. Have you ever seen the house?

A. I have not.

Q. How do you know what its location was?

A. From Mr. Beardall's going there by my direction as a surveyor, as I would know he had surveyed any other
290 piece of land.

Q. From what Mr. Beardall told you?

A. Mr. Beardall and Mr. Jones went there and erected the house, with other employes.

Q. So far as you testify in regard to the location of the house you testify from what has been told you by either Mr. Jones or Mr. Beardall?

A. I do.

Q. During what period did Mr. Jones occupy some part of this grant?

A. He was there off and on. When I say off and on, I mean for a few days at a time, and then would be away again, and then back for a few days. And during the whole time that he was there Mr. Thomas was there. He and Thomas were together. When one of them would be away for a day, Thomas would come in for provisions or Jones would come in for provisions. I don't mean to say he left the occupancy, but he would be away for a day or two or three days.

Q. What period did that cover, what year?

A. Oh, I should say that Jones was there up to about 1892 or '3, I should say, and then he gave up, finally, and Mr. Thomas remained for a year or so afterward, and then these other men that I have stated, Boykin and others, came there.

Q. Then any occupancy which was had by Carleton Jones or by Thomas was some time between the period of 1887 and 1883?

A. I should say so, yes, as I recollect.

Q. About how much land did either cultivate?

A. A small garden near the house, as I understand it.

Q. How large a house did they live in, as you were advised?

A. An ordinary one-room house. I think it was simply a cabin, such as we find in the flatwoods. It was made of sawed lumber, however, not of logs.

291 Q. And the extent of their cultivation was a small garden about the house?

A. Yes.

Q. When did Mr. Boykin have any occupancy of the property?

A. I should say between the time that I have said Mr. Thomas' control ended there, which was about 1893 or '4, and 1900. I don't recollect whether Boykin was preceded by—there were two there during the period between Thomas' moving away and the sale of the property by me. There were two other occupants.

Q. Boykin and Wofford?

A. Yes, Boykin and Wofford, and I don't know which was the first. I don't recollect.

Q. Well what was the character of the possession or occu-

pancy by either Boykin or Wofford during this period from 1893 to 1900?

A. It was much the same as Jones' and Thomas', only an increased cultivation. One of the men wished to buy a small portion of the land and farm on it, and the improvements were increased.

Q. How much was cultivated by either?

A. That I can't tell you, sir, I never measured it. Nor did I have a report of it.

Q. What else beside cultivating this small tract of land did Boykin and Wofford do on the land?

A. What active possession?

Q. No, what else did they do on the land.

A. Oh, I don't know that they did anything but cultivate that land.

Q. How much of the time did they remain on the land?

A. They were there constantly, as far as my knowledge goes.

Q. Was this tract of land inclosed by a fence during this time?

A. It was, so I have been informed.

Q. The whole grant?

A. Oh, no. I mean the tract of land that was cultivated.

Q. The land that was cultivated was inclosed by
292 a fence?

A. Yes sir.

Q. About how much do you think was the largest area that was inclosed by fence?

A. Why, I don't imagine over a couple of acres. I have no knowledge, no means of knowing that.

Q. And that, from the best information you had, was on the side of the grant nearest Sanford?

A. Yes. Let me correct that, though: perhaps there is a portion of the grant that would be nearer to Sanford: I would say the nearest habitable portion of it.

Q. What timber was sold to Mr. Anderson?

A. Some cypress and some cedar, as I recollect it.

Q. What?

A. Some cypress and cedar.

Q. About what date was that?

A. Early in the '90's, about '93 or '94 I should say.

Q. About '94.

A. I can't give the date, and be positive, I can only give it as I recollect it. I remember the fact that it was sold but I have no recollection as to the date. The exact dates could be gotten by going over the old records of the company and finding the dates of the payments.

Q. And about the sale to Royal?

A. The sale to Royal I think was prior to the sale to Anderson.

Q. How about the sale to Saul?

A. I think that was prior to any—I won't be positive of that sale to Saul; he bought timber from me in many cases, in different places, and it may not be that he bought timber on the grant. My impression is that he did.

Q. If he did it was when you first took charge?

A. Yes, when I first took charge, and he bought near the stream, to float the timber out.

293 Q. What sort of timber was sold to Anderson?

A. I think there was some cedar sold to him, both cedar and cypress.

Q. How much?

A. Oh, a comparatively small amount, he was one man, and bought what he got out himself. He was a negro laborer or workman.

Q. You stated in your direct testimony that there was no other person in possession of the land from 1887 to 1900 except the Florida Land and Colonization Company. State whether or not you of your own knowledge know that no other person went on those lands during that time, claiming to own the same?

A. Do you mean of my own knowledge, that men have gone on the land, that I have seen?

Q. No, do you know that no other person went on the land from 1887 to 1900, claiming to own it?

A. Not to my knowledge, and I was kept pretty fully informed.

Q. Is it not a fact that a man by the name of Martin, representing the heirs of Teresa Rodriguez, went on that land during that period, claiming the ownership thereof by the heirs of Rodriguez?

A. I believe there was a man of that name that drove out there one day, in the afternoon, and drove away in the evening. It was reported to me that there was an attempt made to sur-

vey. I referred to that in my examination. They were ordered off.

Q. Then was Mr. Martin one of the parties who attempted to survey?

A. I did not know, sir, whether it was Mr. Martin or a man employed by him.

Q. Well, was it someone who claimed to represent the Rodriguez heirs who attempted to make the survey?

A. The people went out—it was rumored, noised around, that they claimed as representatives of the Spanish heirs, but that became public some time after they left. It was not known when they went out.

294 Q. Who drove them away?

A. My agent.

Q. How do you know that?

A. By the agent's report.

Q. By his statement?

A. By his statement.

Q. He told you that?

A. He told me that he had followed my instructions and ordered them off.

Q. You stated that you had given testimony in regard to a controversy over this land, which you have identified as true, and also at another time you gave testimony?

A. A suit was brought in this matter by someone representing the heirs, and was tried in Lake County.

Q. The heirs of Rodriguez?

A. The heirs of Rodriguez. It was tried in Lake County. The late Judge Foster, E. K. Foster, was my attorney. And I gave testimony at that time.

Q. Can you remember the date of this suit?

To which question defendant objects, on the ground that it seeks evidence not the best evidence, the record of said suit being the best evidence.

A. It must have been about 1892—1891 or '92. The papers were served on me, or sent to me, at London, England. I think that was the time. It must have come up in '92, early in '92 or late in '91. I may be mistaken by a year about it. I think I would like to correct that and say it must have been in 1891. I think it was more likely in 1891.

Q. You stated that you employed these various persons to live on this grant from 1887 to 1900?

A. Well, the men were in my employ, not necessarily for that one purpose. There were two of them, Wofford and Boykin, who were employed for that one purpose, but the other men were in my employ in other service.

Q. Why did you have these people, Wofford and Boykin, to reside on this property?

295 A. From the attempt that had been made to survey I supposed that some people claimed it, simply from what I heard. I had no knowledge of the claimants except what I heard. And I wished to be on the safe side in representing my company's interests.

Redirect Examination.

By Mr. Haskell:

Q. Is it not a fact, Mr. Rand, that these agents of yours, placed by you upon this property as you have mentioned, made reports to you from time to time as to their acts in the premises?

A. They made reports to me regularly, generally once a week, as to anything that occurred on the property, and at times I sent my chief clerk, Mr. Beardall, out there, and he would remain two or three days at a time, and he would also report to me anything that happened out there, connected with the land, at all, or the possession.

Q. What instructions did you give to your agents as to the control of this property?

A. To allow no one to settle upon the land, to do any act of possession, or to allow anyone to make any survey of the property.

Q. Outside of living in this house, cultivating the land and keeping off trespassers, what control did these agents have of this land?

A. Well, their control was simply this, that they had instructions from me to keep any trespassers off of the land, to see to fighting fire, where it was necessary, to keep the property up and live on it. They followed my instructions. They were my representatives.

Q. State whether they were supplied with teams or horses to go over and about the property so as to watch it.

A. I kept no regular team there. When Jones went out, or Mr. Beardall went out, they carried teams with
296 them. Thomas wouldn't have ridden a horse if he had had it; he was an old hunter, and could travel over the whole property quicker than a horse would. Boykin and Wofford, I do not know whether they had their horses or not. One of them, I think, must have had, but I did not supply it.

Q. State whether or not you know if they obtained their fuel for use there off of that grant?

A. They did.

Mr. Jones:

Of your own knowledge?

A. No, I never saw them cut it. It was what they reported to me.

Q. State whether or not your company sold some cedar timber to a man named W. C. White.

A. I don't recollect the name, sir. We sold cedar timber there, but I do not recollect that name. I won't say but what I did. I recollect Royal, and I may have sold to others, but I don't recollect them now.

Q. They have asked you something about that suit. What became of that suit, if you know?

A. All I know was that Judge Foster said it was ended, and sent me a bill.

Q. Were you ever put out of possession of that property as a result of any such suit?

To which question complainants object, on the ground that same asks for a conclusion of law.

A. No sir. I always held possession.

Q. Can you state positively who your agent was who ordered these parties away on these two occasions?

A. I think in one case it was Thomas, and I think the other, the second occasion, was after Thomas left, and it must have been either Boykin or Wofford who was in possession at that time. I can't recollect which.

Q. Can you state what became of Thomas?

A. Thomas, as I understand, went to parts unknown, on

account of some trouble that he had had with some-
297 one on a railroad train. He left me without notify-
ing me. He was in possession at that time and left me without notifying me that he was going.

Q. Have you ever heard of him since?

A. No sir, I have never heard of him since.

Q. He is not in this county now?

A. Oh, no.

Q. State whether or not you paid these agents compensation for looking after this property?

A. Yes sir, they were regularly employed for the purpose, and paid compensation by the company, with the exception of Jones and Thomas: they were in my employ in other work and were assigned to that duty. They were regularly employed by me. It all came out of me. These men were all regularly employed and paid compensation to look after the property.

Complainants here move to strike all of the testimony of the witness Rand which is hearsay, and further move to strike all the testimony of said witness given on the direct and re-direct examinations, relating to the occupancy of the tract of land in question, on the ground that such testimony does not establish an adverse possession, either at common law or under the statutes of the State of Florida, and because the same is immaterial and irrelevant.

The hearing was here adjourned to three o'clock P. M.

Three o'clock P. M. hearing resumed.

One WILLIAM SLADE was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Please state your name, age and residence?

A. At this present time?

298 Q. At the present time.

A. I will be seventy-six years old the 3rd day of next November. I live about eight miles, (about five miles by rail), south-west of Kissimmee, in Osceola County.

Q. Please state whether or not you know the premises and property known as the Teresa Rodriguez grant, or Powell grant, designated as Section 34, in Township 19, south of Range 28, east, and Section 41, in Township 19, south of Range 29 East, a tract containing 5,486.48 acres, now in Lake County, that was formerly in Orange County.

A. I don't know that I know the township and range the land is in, but I know the Rodriguez grant, known as the Powell grant afterwards.

Q. State when you first knew this property.

A. The first ever I knowed of the property, sir, was the time that Mr. Powell bought it of William Mills, living at Apopka at that time.

Q. That was George C. Powell?

A. George C. Powell.

Q. What was he, what was his occupation?

A. He was a minister of the Gospel.

Q. Minister of the Gospel?

A. Yes sir.

Q. What relation was he, if any, to you, either by marriage or otherwise?

A. He was my father-in-law, sir, I married his daughter.

Q. Can you state about the time that was that he went on there?

A. I can't state precisely the date, sir, but it was some time in January or February.

Q. Of what year?

A. '72.

Q. 1872?

A. Yes sir.

Q. What did George C. Powell do on that property when he first went there?

A. He built a mill on it, sir. He built some houses there first, I suppose: I wasn't there when they were built, but I saw them there. He built a house on the south side of the spring run, and then his son built one on the north
299 side of the spring run.

Q. What is his son's name?

A. George W. Powell. Then W. P. Lassiter built a house over there, or the old man had it done—I don't know about that.

Q. What relation was Lassiter to him?

A. Son-in-law, sir. That was on the north of the springs.

Q. Did they cultivate any land there?

A. Yes sir, they cleared up a little and cultivated it. The old man didn't clear a great deal, because he was waiting to build this mill.

Q. They planted a crop there?

A. Yes, not a great deal, but some little crops.

Q. Enough to get their sustenance there?

A. Yes sir.

Q. When did you first go on it?

A. First I went up there, to the best of my memory now, some time in '73, I think--let's see—about the spring of '74.

Q. How did you happen to go up there?

A. The old man got me to up there to build a house for him, and afterwards hired me to run the mill, and I run the mill.

Q. Did you stay there after '74?

A. After '74?

Counsel:

Yes.

A. Yes, sir.

Q. How long did you stay there, and where did you live and what did you do?

A. I bought or had an interest in the ninth section of timber, and the mill site, and I lived there on the place. I lived in the old man's house there until I taken up a homestead and built a house on that, and then I lived on my homestead and worked at the mill.

Q. What did you purchase from George C. Powell? What part of this grant did you purchase?

A. I bought a half interest in the ninth section and the mill, and the timber, the saw timber, on the whole of
300 the grant.

Q. Then what did you do with the timber?

A. I sawed it, what I could of it, and sold the lumber.

Q. What sort of lumber did you cut from this grant?

A. I cut pine timber principally. I cut some hickory, and cut some cypress—no, I didn't cut any cypress, but I cut some cedar and cut some poplar.

Q. Where did you cut this cedar timber?

A. I got it out of that swamp, off the grant.

Q. Where did you get the pine?

A. I got the greatest part of it off the sixteenth and ninth and tenth sections.

Q. A portion of the grant?

A. A portion of the grant, sir.

Q. Are you familiar with the boundaries of that grant? Were you then?

A. Yes sir.

Q. How was that grant located?

A. Well, sir, it is a fraction over two section wide, north and south, and I think, to the best of my memory, it is a fraction over four sections long, east and west, running up and down the creek swamp.

Q. Do you know how these boundaries there were?

A. Yes sir, it is about seventy yards from the section lines out to the grant line.

Q. These sections you were talking about?

A. Yes sir.

Q. The sections, then, were inside the grant lines?

A. Oh, yes, they were inside the grant lines.

Q. And the corners of these sections you say were about seventy yards from the grant line?

A. Seventy yards inside of the grant line. The grant line run outside.

Q. Was outside of the whole thing?

A. Yes sir.

Q. Were the corners of the lines of this grant marked?

A. Yes sir.

Q. You knew then at the time?

A. Yes, each corner—there is one corner that I don't know as I ever seen, that is the southeast corner of the
301 grant, but I have seen the south-west corner, and the north-west corner of the grant.

Q. And how about the north-east?

A. And I had seen the north-east corner of that grant.

Q. What sort of land was the easterly part of this whole grant?

A. The principal part of it was swamp.

Q. Heavy swamp?

A. Heavy swamp, cypress and other underwood.

Q. How about the balance?

A. Well, all that wasn't in the swamp was pine land, outside the swamp.

Q. Do you recollect where George W. Powell's grove was?

A. Why, it was right around his house. There wasn't any grove there to amount to anything, sir. George C. Powell had a grove down at the little house that I built for him, but it never amounted to anything.

Q. He did have some trees there?

A. A few little trees set up there, and I think George W. Powell had some set out there.

Q. Was there any around the Lassiter place?

A. I don't think so; I couldn't say positively, whether there was or not. Since that time there has been a grove set out there.

Q. Where was that?

A. That was on the George W. Powell place.

Q. And who set that out?

A. Who set it out?

Counsel:

Yes.

A. I think that C. T. Smith commenced setting it out, and sold it to Lonnie Royal, some way, I think he had an interest in it some way, I don't know about that, and he set out the most of it, Lonnie Royal did.

Q. How about the cultivation of these farms. Did they cultivate them each year that they lived there?

A. Yes, they didn't do much farming, very little farming, but they did enough to make what vegetables they wanted, potatoes and roasting ears, such things as that, and peas.

Q. Where did they get the rails they made their fences with?

302 A. I suppose they had them split.

Q. From what property?

A. They got it off the grant.

Q. What portion of the grant?

A. The old man got his, what rails he had split, or most of them, off the sixteenth section. Powell and Lassiter, I suppose, got theirs off the ninth section.

Q. Where did they get the fuel that they used all the time they were there?

A. Why off the grant, I suppose, sir.

Q. Where did you get yours, that you used?

A. I got mine off my homestead principally.

Q. Yes, but before you went on the homestead?

A. I got it off the grant while I was on the grant.

Q. How many years were you on this grant before you went on the homestead?

A. Why, I think I homesteaded it, sir, in '75, or the latter part of '74—no, '75 I think it was.

Q. You say that you built a house for George C. Powell?

A. Yes sir.

Q. Where did you build that house?

A. I built it on the ninth section, on the north side of the mill run.

Q. What part of the grant is that on?

A. Well, that was on the western portion of the grant.

Q. Toward the north side or the south side, or in the middle?

A. I can't tell you exactly about that, sir, but it was on the ninth section.

Q. What part of the ninth section was it on.

A. Well, I suppose sir, it was somewheres about the west side of the north-west quarter.

Q. About how far from the mill was this?

A. Where I built that house?

Counsel:

Yes.

A. A little over a quarter, between a quarter and a half.

303 Q. As you talk of the sections, what section was the mill on?

A. The mill was on the ninth section.

Q. Toward the south of that, or about the middle of it?

A. Where we built that house?

Counsel:

No, where the mill was.

A. The mill was somewhere not a great ways—well, it wasn't over—I suppose, sir, it was on about—well, it was

somewhere not a great ways from the southern line, the line running east and west.

Q. The south line of the section?

A. Yes sir, running east and west.

Q. Of the ninth section?

A. Of the ninth section.

Q. How long after you moved onto your homestead was it that you continued to run the mill and cut timber off this grant?

A. Until '81 or '2, the first part of '82 or the latter part of '81.

Q. Were you still cutting when the old man moved away, when the old man was taken away?

A. When the old man left there?

Counsel:

Yes.

A. Yes sir, I was.

Q. The mill was still running then?

A. Yes sir.

Q. Who ran the mill after you did?

A. Why, I turned the mill over to George Powell. I sold to George W. Powell, and turned it over to him, and he was running it.

Q. Who ran it after he did?

A. Why, I think Mr. Owens rented it or leased it, and was running it a while.

Q. What Owens?

A. Lonnie Owens.

Q. This man here? (Indicating a man in the room.)

A. That is him, I think, sir, if my eyes don't deceive me.

Q. How long did you live in that neighborhood after this, after you sold out?

A. After I sold out?

304 Counsel:

Yes.

A. I was there, sir, until after the big freeze—well, I was there in '98. I left there, I think, in February, '99. I moved away from there.

Q. After the old man Powell left there who got that property?

A. I don't know of anyone, only George Powell. I sold my interest there to George W. Powell.

Q. Who did he sell to?

A. I suppose he sold to Sanford, in fact I know he sold to Sanford. He sold it to Sanford, but whether him or the old man made the trade I don't know anything about that, but my understanding was that the old man turned over his papers just before he died, to George W. Powell, and George W. Powell made the sale to Sanford.

Q. That was your understanding?

A. That was my understanding.

Q. Anyhow, it was sold to Sanford.

A. It was sold to Sanford.

Q. Who had this property in sharge after Sanford had it?

A. Well, there was an English company, I think, that Sanford sold it to. I am not positive about that.

Q. Do you know who their agent was?

A. I can't call his name now, sir, but he lived down below here, somewhere near Longwood, I think.

Q. Do you refer to Mr. Rand?

A. Yes sir, Rand was the name.

Q. Frederic H. Rand?

A. Yes sir.

Q. When Sanford had this property, and this English company had it, who was in charge of it, in charge of the property out there, who was on it for them, if anyone that you know of?

A. Why, there was a man by the name of Thomas went out there. They got up some disturbance over there: a man from over in Volusia County come over there and was hunting up some lines and raising some disturbance over there, by the name of Bennett, claiming that the Spanish heirs had
305 come out and were putting in their claim. That was the first I ever heard about it at all, that there was any disturbance about it: and then Sanford put a man out there, or his agent here in town did it, I suppose, in his place.

Q. Who was that?

Q. I think it was Beardall, the man that was out there.

Q. Beardall went out there?

A. Yes sir.

Q. Who was the man they left in charge there, if anybody?

A. Jones and a man by the name of Thomas.

Q. Did you know these men were on there?

A. Yes sir.

Q. Living on the property?

A. Yes sir.

Q. In charge of the property for these men?

A. They were in charge of the property, yes sir.

Q. Do you know how long they stayed there?

A. I don't know how many years Thomas was on there, some two or three.

Q. Who was there after Thomas?

A. Why, Mr. McIntosh had charge of it for a while.

Q. Mr. McIntosh?

A. Yes sir.

Q. Who after him?

A. Well I don't know, sir, only this Wofford, he was there for a while.

Q. J. W. Wofford?

A. I don't know what his initials is, Mr. John Wofford, he was down there near the bridges. And after him, Mr. Boykin.

Q. What Boykin?

A. John Boykin.

Q. Who was the last man that was there before you went away from that neighborhood?

A. Why, Wofford.

Q. State whether or not while George C. Powell was there, and and you were running the mill for him and lumbering, as you have said and working around and about there,
306 anybody else ever put in any claim, or you knew of any other claim, to any part of this property?

A. None at all that I knew of, anything else.

Q. Was there anyone else in possession of that property except those parties during all that time?

To which question complainants object on the ground that same seeks a conclusion of law.

A. Not after Powell got in possession of it.

Q. Was there anybody else during all this time occupying

this land or using it, or doing anything on the land, except the persons under George C. Powell?

A. None that I know of, sir.

Q. You were living there?

A. I was living there, sir.

Q. Was there anyone else while you were working it?

A. I reckon if anybody had come in there and tried to occupy it we would have found out what their business was there.

Q. You claimed to own it yourselves?

A. We were in possession of it, sir, we paid taxes on it.

Q. What was the neighborhood name for that grant?

A. Well, after Powell got it it was always called the Powell grant.

Q. It was known also as the Rodriguez grant?

A. The Rodriguez grant.

A. After George C. Powell went on that property in 1872, as long as he stayed there, until he went away, in 1882, who was generally known and acknowledged and understood in the neighborhood to be the owner of that property, and in possession of that property?

To which question complainants object, on the ground that same is immaterial and irrelevant.

A. George C. Powell and myself and George W. Powell.

Q. Anybody else other than those who claimed
307 under George C. Powell.

Same objection as above.

A. No one, sir, at all.

Q. How about the period from 1882 until you moved away in 1899, as to the use or occupancy or control of that property by any other persons than Sanford and the Florida Land and Colonization Company? Were there any others in control of that property?

A. No one else had control of it, sir, as far as I know. I don't know of any one having any control of it.

Q. You were living there in the neighborhood, weren't you?

A. I was living there in the neighborhood.

Q. You knew of the time they attempted to survey it, did you?

A. Yes, I know about the time, but I couldn't say positively what time it was, I knew that somebody had surveyed around it, I had seen the blazes. I had been in the swamp and seen the blazes.

Q. You couldn't say whether Mr. Beardall did it?

A. I don't know who did it.

Q. You don't know who did the surveying?

A. I don't know who done the surveying.

Q. Do you know who Jones and Thomas and McIntosh and Boykin and Wofford were holding that property for, and who it was generally understood that they were holding it in the name of?

A. I suppose it was Sanford.

Q. And this other company?

A. And this other company.

Q. Was it generally understood in the neighborhood there that they were doing that?

A. Of course, sir, of course.

Q. Was it understood in the neighborhood, or known, that anybody else was in possession whatever of that property?

308

To which question complainants object, on the ground that same is immaterial and irrelevant and incompetent.

A. Not that I know of, sir.

Q. Was there anybody else known generally in the neighborhood as controlling or exercising any ownership over that property there?

A. Nobody that I know of, to the best of my knowledge, I don't know of any.

Q. Did you ever see anybody on this grant except these parties, doing anything or using any of that property?

A. Oh, yes, sir, there was some negroes there that was cutting cedar there, but I suppose they had the right to.

Q. They were cutting cedar?

A. They were cutting cedar, and cutting cabbage palmettoes out of there.

Q. That was during what period?

A. I don't know exactly what period that was, the cutting of the cedar.

Q. Do you know who it was that was cutting the cedar?

A. Why, yes sir, I think young Mr. Boykin cut some timber in there, sir, in that swamp.

Q. Do you remember anything about a man by the name of White?

A. White cut that Cedar there, sir, when old man Powell had control of things.

Q. Do you recollect a man by the name of Ivey Royal cutting some there?

A. They might have cut some cedar off of it, but they cut the most of the cedar there during the time that Powell had control of it.

Q. Do you remember a colored man by the name of Anderson cutting some there?

A. He cut some cedar there, but that was after Mr. Powell had turned the property over to Sanford. Mr. Powell never sold any cedar, only to White.

309 Q. Do you remember a man by the name of Sauls cutting timber off of the grant?

A. Sauls?

Counsel:

Yes.

A. No sir, not while Mr. Powell was in control of it.

Q. Was it Ivey Royal, or Alonza Royal, that got that timber?

A. I don't know. The family was at work at it. I don't know whether it was the old man or the young man. I suppose the young man was in there with Mr. White, but Mr. White was the man that bought the cedar from Mr. Powell.

Q. Do you remember their cutting some after that?

A. Now, I couldn't say whether they cut after that or not sir, I know White cut a good deal of timber in there.

Q. How about running that mill there; did the people generally come from the neighborhood and have their corn ground at that mill?

A. Yes sir, wherever they made any.

Q. Where did the lumber go?

A. The lumber went all through the country, sir, a heap

of it here to Sanford. A heap of it went on the south side of Lake Jessup.

Q. How about the ginning of cotton?

A. Why, the cotton was ginned for the people all through the country.

Q. That was while Powell was there?

A. Yes sir, Mr. Powell was before I went there.

Q. How long was it that that mill stood there?

A. Well, I can't tell you that, sir, it was burned down: most all the mills get burned down, in that country; it was burned down, I think it was, sometime between '80 and '90, I think it was burned down.

310 Q. That was after you quit running the mill?

A. After I quit running it, yes sir.

Q. And after the old man went away?

A. Yes sir, the old man was done gone, sir, he was dead.

Q. And after Mr. Owens was there?

A. After Mr. Owens was there, yes sir, I don't know just how long, I know it was burned during that time, it was supposed it caught from the woods. That was the supposition.

Q. What time was the last you know that there were orange trees on any of these improved places?

A. Up to the freeze.

Q. Which freeze?

A. In '95.

Q. Up to the '95 freeze?

A. Yes sir, and they might have put up some oranges after that.

Q. That was—who were the last people that you know to have cultivated those orange trees, any of them, or put orange trees in there?

A. Why, I cultivated mine up to—I think it was '90—until I left there, or just a little while before I did leave there.

Q. On this grant?

A. Well, I don't know about on the grant, I don't know whether it was Mr. Royal or—I can't call his name now—or Doctor Pemdleton. He got hold of that property, and he cultivated it up to the freeze.

Q. The same freeze too?

A. The same freeze of '95, I don't think he ever done anything there after '95 on the grove.

Q. What part of the property was this Pendleton grove on?

A. The grove was on that part of the place right where George W. Powell left it.

Q. The George W. Powell side of it?

A. Yes sir.

311 Q. You recollect clearly, do you, of testifying before about this matter, before the commissioners, Field and Kreigsman, at Lockhart, some nine or ten years ago?

A. Yes sir.

Q. The statements you made at that time were true?

A. To the best of my knowledge and belief they were, sir.

Complainants here moved to strike all of the testimony of this witness, on the ground that same is immaterial and irrelevant, and because the facts testified to do not amount to an adverse possession, either at common law or under the statutes. And complainants further move to strike all testimony of the witness as to facts which occurred prior to the issuance of the patent by the United States for these lands in 1895, on the ground that same is immaterial and irrelevant.

Cross-Examination.

By Mr. Dewhurst:

Q. You say you bought a half interest in Section Nine? and in the mill, and half the timber?

A. Half the timber on the grant, the saw timber, sir.

Q. Saw timber?

A. Saw timber.

Q. Each section is a mile long, is it not?

A. I suppose that is what they say, sir, six hundred and forty acres in a section.

Q. And according to your testimony this grant would be, then, about three miles north and south, and four miles east and west?

A. No sir, I didn't say three miles, I said two miles, sir. I said it was two sections one way and three the other, and then these fractional sections around.

Q. Then it would be a little more than two miles north and south, and a little more than four miles east and west?

A. There is supposed to be just an acre strip around that grant.

312 Q. How much?

A. An acre-wide strip around the grant, around the whole grant.

Q. Outside the sections?

A. Yes sir.

Q. It was a little more than two miles north and south and a little more than four miles east and west?

A. That's right, sir.

Q. Now which were the sections on this grant that had settlements on them, at the time you left there, which sections?

A. Section Sixteen had a log house on it: section nine had two log houses on it, besides this little frame house I built. And the mill was on the ninth section.

Q. Now, about how much land was inclosed or cultivated on Section Sixteen?

A. Why, I don't suppose there was over an acre, if that.

Q. Now, about how much on Section Nine, outside of the mill?

A. Well, sir, I suppose George Powell had about three or four acres probably, then, and I suppose Lassiter had about the same. I won't say positively about that.

Q. Then all the rest of the grant was wild land?

A. It was at that time, yes sir, except the improvement of the mill.

Q. There was no attempt to fence the whole grant?

A. Oh, no, it wasn't fenced.

Q. What sort of land was there adjoining; the adjoining land, up to the grant, was it the same character as the grant land?

A. Parts of it was scrub, some parts of it flatwoods, and part of hill land, pretty much just like the grant was.

Q. Well was that occupied or wild?

A. It was wild land, sir.

Q. What was the date when these Spanish heirs sent a party to take possession there?

A. I can't tell you right now, sir. I don't remember, but as I tell you, the first man that ever come there to

313 interfere at all was this man, Bennett. He used to be sheriff of Volusia County.

Q. Sheriff?

A. He used to be. I don't know what he is now. He was afterwards a Hardshell Baptist preacher.

Q. Was that while Powell was living on the grant?

A. No sir, Sanford had bought the grant then.

Q. Well, now, your testimony was, then that Sanford became alarmed and put a man on there to look after it?

A. That was how come him to put the man there, was when these people come over here.

Q. Prior to that time had there been anybody there?

A. No; only the people who had lived there and worked there.

Q. How near can you locate the time when these heirs undertook to take possession?

A. I couldn't say, sir.

Q. Was it soon after Sanford bought it, or some time after?

A. Oh, it was some time after. I don't know exactly how long, but it was some little time.

Q. What did Thomas do on the land?

A. He hunted, and drank whiskey, sir, if you want to know what he done.

Q. Well how long after Sanford bought it did he put Thomas there?

A. Well, I don't know how long it was after Sanford bought it, but it was some time, some little time: there had never been no use of putting anybody there; it was known that Sanford had bought it, and nobody had raised any disturbance about it.

Q. And nobody took any occupancy of it or paid any attention to it?

A. No attention to it.

Q. Up to that time, until he put Thomas there?

A. Until he put Thomas there? He put that other man there first.

314 Q. Who was the first man?

A. Jones.

Q. Now, what did Jones do, anything?

A. Jones didn't do anything, sir. Him and Thomas hunted around there.

Q. Well how much of a house did Jones have?

A. Jones had the little house I built for old man G. C.

Powell. They lived in that little house. It was standing at that time, and they lived in it.

Q. In what section was that?

A. That was in the ninth section, in the north-west quarter of section nine, to the best of my recollection.

Q. Did Jones cultivate any land?

A. No sir.

Q. Did Thomas cultivate any?

A. Well, I believe he did plant a few chufers there, a year or two, or something like that.

Q. Well, how much was the most that he cultivated it?

A. Thomas?

Counsel:

Yes.

A. Oh, I don't suppose it would amount to anything, he was put there to keep other people from trespassing on the property, was what he was put there for.

Q. What about McIntosh? How much did he cultivate?

A. I don't know whether he cultivated any or not, sir.

Q. Where did he live?

A. He lived down on the spring run.

Q. On what section?

A. I don't know, sir, whether he was on section sixteen or not. I think, though, if my memory serves me right, that he was on the section below that. I don't know what the number was, now, I couldn't tell. But he was living right outside of the swamp.

Q. What time was he there, to your recollection?

A. I don't know, sir, how long he was there. I couldn't say.

Q. Well what did Wofford cultivate.

A. I don't know whether he cultivated anything or not. He had some hogs there, and he was looking after them.

Q. Where did Wofford live, what part of it?

315 A. He lived somewhere not a great ways from the eastern line of the grant, running north and south, at what we call the Double Bridges.

Q. How big a house did Wofford have?

A. Why, he had nothing but a shack there, sir.

Q. A little shack?

A. Yes.

Q. Do you know when that was burned?

A. No, sir; I couldn't tell you when it was burned. It was 'built there sometime in—

Q. (Interrupting) Did he have any lands inclosed about his house?

A. I don't think so, sir.

Q. Did any other people that you have testified about have any lands inclosed about their houses?

A. What other people, the Powells?

Q. No, Jones, Thomas or Wofford.

A. Yes, sir. Mr. Thomas and Jones where they was staying there was, I reckon, two acres, or may be two and a half inclosed there.

Q. That is, that was cleared before they went there?

A. Yes sir.

Q. And they lived in the house where this clearing was?

A. Yes.

Q. Did they keep up the fences around that house?

A. Oh, I think so, sir.

Q. Do you know?

A. Oh, I couldn't say positively, sir. I suppose he did. He planted it in chufers, and he had some hogs in there, that would have been apt to have went out.

Q. What occupancy did Boykin have? What lands did he cultivate?

A. Mr. Boykin?

Counsel:

Yes.

A. I don't know, sir, I don't know whether he cultivated any or not. I think Boykin was supposed to be there on the grant, and around about there every day or two.

316 Q. What sort of a house did he live in?

A. Mr. Boykin?

Counsel:

Yes.

A. He lived in a house out on his place.

Q. Oh, he didn't live on the grant?

A. No sir, he might have stayed there in the house that McIntosh built, a portion of the time, I don't know about that. I left there about that time, and I don't know anything about it. Wofford was there when I left.

Q. Was that about 1889 or 1899?

A. I left there in '99, 1899.

Q. Boykin was there at that time, that is, he had charge of the place?

A. No sir.

Q. Who had?

A. Wofford. He bought some hogs from me, and that was where he carried them to, down to his camp.

Q. Then did Mr. Boykin come after Wofford?

A. Mr. Boykin come after Wofford. As to Mr. Boykin, I don't know anything about Mr. Boykin, only what I heard Mr. Owens and others say, that Mr. Boykin was there looking after the property. Of my personal knowledge I don't know anything about that at all.

Q. But he was living on his own place, near there?

A. He was living out on his own place, I suppose.

Q. Then at that time there was nobody living on the grant, when Boykin was looking after it, was there?

A. Not as I know of—yes I suppose there was, because when I left my place I left my place in charge of Gus Royal; he rented it, and was going to cultivate. But my place was'n't on the grant, mine was a homestead, but it was right there at it, within a quarter of it. But there was no one on the grant that I know of.

Q. There was no one on the grant that you know of at the time you went away from there in 1899?

A. No sir.

317 Q. Well prior to that time had the Rodriguez heirs sent anybody there to look after their interests, except this time you first testified?

A. No one that I know of, sir.

Q. How often did you see these grant lands or were you over them, within the last three or four years before you went away?

A. Why, I saw them every day, more or less, some of them. I was generally around home pretty regular,, and I just had to look across a little strip of land there, about a quarter of a mile, to see the grant. I wasn't on the grant, only when I

went fishing. I used to go fishing a good deal, and was up and down the creek there, fishing.

Q. And in the last two or three years before you went away did you see anybody on the grant at all, living there?

A. Oh, yes, Mr. McIntosh was living there.

Q. How long before you went away?

A. Oh, I couldn't say, but he was there awhile.

Q. On what part did Mr. McIntosh live?

A. He lived on the grant.

Q. On what part of it?

A. Well, not a great ways from the south line, running east and west.

Q. From the south line, running east and west?

A. Yes sir.

Q. Did he build a house on the grant?

A. Yes sir, he built a shack there.

Q. A big shack?

A. I suppose the house was probably sixteen or maybe twenty feet long, and ten or twelve feet wide.

Q. Did he inclose any lands?

A. Well, I don't know about that. I don't think he did, only just a little, maybe, right around his yard.

Q. What claim did the state make to this land during any of the time that the Powells occupied it?

A. The state?

Counsel:

The State of Florida.

318 To which question defendants object, upon the ground that same is immaterial and irrelevant and not proper cross-examination.

Q. (Continued) You have testified that no person made any claim to this land except Mr. Powell and those that claimed under him. Didn't the State of Florida make a claim to this land.

Same objection as above.

A. It never made any claim to the land, sir. It sold it for taxes a time or two, but we released it and paid the taxes.

Q. Was that the only claim that the State of Florida made to any part of it?

Same objection as above.

A. The only claim that ever I heard of, sir.

Q. Was the control of this land had by Mr. Sanford and the Florida Land and Colonization Company the same in the early part of the period during which they claimed it, as it was in the latter part of the time, just before they sold it? Was there any difference in their claim or control?

A. In whose control?

Q. Sanford's and the Colonization Company's.

A. I don't know anything about what they done in their transactions, sir. I don't know anything about that.

Q. You don't know anything about their control?

A. No sir.

Q. Well was the occupancy of the land the same in 1890 that it was in 1895, the same kind of occupancy, I mean?

A. Yes sir, I think so, I think it was about the same. I think Thomas was there some time along about that time, in 1895, or probably a little before that, and then in '95, why Doctor Pendleton had a grove there that he bought of C. T. Smith—I don't know whether he got it from C. T. Smith or from Royal, but anyway, he was in charge of that
319 grove and cultivated it.

Q. How much land did Pendleton's grove cover?

A. Some five or six or maybe seven acres.

Q. And did he claim to own that himself?

A. He claimed to own it, sir.

Q. Did he claim to own any of the rest of the grant except that?

A. I don't think so.

Q. Did he claim to reside on any of the rest of the grant except what he claimed?

A. No sir, he didn't reside there at all.

Q. He didn't reside there at all?

A. No sir, he hired a man to cultivate the grove.

Q. Then he claimed about six acres inside the grant?

A. He claimed what was under fence. I suppose there was probably twelve or fifteen acres under fence.

Q. He claimed that particular piece of land?

A. Yes, as his property.

Q. But he didn't lay claim to any of the rest of the grant?

A. No sir, not that I know of. And before Pendleton came there there was a man by the name of Raymond, I think, bought that property, that Pendleton grove. I don't know whether he bought from Royal or Smith, or how, but anyway, he was in possession of it; and I couldn't say positively whether Smith and Royal sold to Pendleton or to Raymond, or whether Raymond sold to Pendleton, but Pendleton come in charge of it, and was owning it at the time it got froze down.

Q. What was the time that Anderson cut cedar on the grant?

A. Oh, I can't tell you sir, what time it was, but it was, I think, after Sanford had got charge of it.

Q. About what time?

A. I don't know how long he cut, sir, or any-
320 thing about it. I know he cut some cedar there, and they cut some cabbage in there, but I don't know how much, nor when it was. I know they cut it, but it was after Sanford got in possession of it.

Redirect Examination.

By Mr. Haskell:

Q. Do you recollect a tract of land in this grant that was conveyed to Smith & Clifford?

A. Yes sir.

Q. What did they do there?

A. Farmed a little there, and they merchandised there.

Q. Had a store?

A. Had a store.

Q. And what part of the grant was this on?

A. It was on the ninth section, not a great way south, a little west of south, of right where I built that little house.

Q. North of the mill stream?

A. North of the mill stream. George Powell sold it to Smith and Clifford.

Q. That was George C. Powell, the old man?

A. George W. that was, the portion of it that he owned. And Smith put some orange trees there, too.

Q. They planted some orange trees?

A. Yes sir, but it was put in the old clearing that George W. Powell had made.

Q. How long was that cultivated?

A. Well, I don't know.

Q. How long were the trees there?

A. Well, I don't remember when Smith put them trees out there, I don't know how long he was there, he was there some two years, I think. I won't say positively that he was.

Q. Can you fix the dates when they were there?

A. I think it was about '78, I won't say positively. I think that it was when Smith was there.

Q. Was that before or after old man Powell moved off?

A. The old man had moved away from there.

321 Q. Then it must have been in '86, wasn't it?

A. No—hold on—let me see. Well, old man Powell never permanently left there until some time in '81 or '2, but he used to go backwards and forwards to Lake Harney, and around where his children were, and stay with them awhile.

Q. It was after that time that Powell sold to Smith and Clifford, George W. Powell, or was it before that?

A. I couldn't say what time it was. I know Smith stayed there, and they sold goods there a while.

Q. You can't place just the dates?

A. I can't place the date right now. And, more than that, George W. Powell sold goods there a while after Smith left there, in the same house.

Q. Who was in charge of this grant property when this man, Bennett, came over there to try to make a survey of it?

A. I don't know whether he come to make a survey or not, I don't know what he come for, but he come to hunt out the property, and he said they had found the Spanish heirs. That the Spanish heirs had come to put in their claim. Sanford owned the property at that time.

Q. Who was there on the property, keeping off trespassers?

A. There was no one.

Q. Wasn't there any one there?

A. No sir, no one at that time.

Q. What did Bennett do?

A. I don't know whether done anything or not, only just blowed around a little.

Q. How long did he stay there?

A. He come to my place one morning—I think it was in the morning, to the best of my recollection and I don't know whether he stayed there until noon or not.

Q. He went off that day, did he?

A. He went off.

Q. That was the only claim you ever heard of?

A. The only claim I ever heard of.

322 Q. Now, where was it that Wofford lived on that grant?

A. Wofford lived right in there at the Double Bridges. That is the only way I can tell it, sir, at the Double Bridges, on a road that was cut through from Cacia.

Q. That is where he carried the hogs that he bought from you?

A. Yes sir.

Q. Now, was that when you left, that he bought the hogs from you?

A. He bought the hogs of me and carried them there; I carried the hogs to him one day and I left the next.

Q. Then he was on the grant when he got the hogs?

A. Yes, when them hogs war carried to him he was on the grant.

Q. They were on the grant, and you left Wofford there on the property?

A. Yes, and afterwards I went over there to see Wofford, and Wofford was there then.

Q. That was in 1899?

A. Yes sir.

Q. And he was caring for the property?

A. Yes, I suppose so, he was there on it, and I thought he was going to do some farming there, but whether he ever did or not I don't know.

Q. Now going back to the time when the Powells and Lassiter were there, or when you left and Lassiter had just gone away, did Powell have any cattle?

A. Not when he went there, he didn't, sir.

Q. Did either of the Powells, at the time they were running the mill, have any live stock or cattle?

A. Old man Powell sold—or rented, I won't say which—his part of the mill to J. F. J. Mitchell, and Mitchell let them have some cattle.

Q. Well where did they stable or pasture those cattle?

A. Right there at that little house I was telling you about.

Q. Right there on the grant?

323 A. Right here on the grant, sir. He didn't have but a few head, but he had a few head there.

Q. Didn't those cattle range and pasture around on that grant there?

A. Yes sir.

Q. And their home was on the grant?

A. Their home was on the grant.

Q. Did George W. Powell have any live stock of any kind, horses, cattle, mules, or anything?

A. Yes sir, he had a couple of horses there a while before he left there.

Q. What did you haul your lumber with, or your logs?

A. I hauled it sometimes with mules and sometimes with oxen.

Q. Did those oxen graze and pasture around on that grant?

A. Well, not much, because we had them to feed. We worked them, and had to feed them.

Q. Well, sometimes you didn't feed them?

A. Well, on Sundays we would turn them out and they would graze around the mill.

Q. Did anybody ever stop you or the Powells from using the grant for that purpose?

A. No sir, if there was any disturbance at all I never heard about it.

Recross Examination.

By Mr. Dewhurst:

Q. You say that Smith and Clifford lived on this section nine?

A. No sir, I didn't say Smith and Clifford. I said Smith.

Q. Smith lived on section nine.

A. Yes sir.

Q. You say this grant was marked by corner posts?

A. Yes sir.

Q. Did all the sections of a mile square have the lines run and the corner posts set on that property?

A. Oh, I don't know about that, sir. Our papers called for

so many sections, so much land, and we knew about
324 where it was, we knew what our section of land was, and what township it was in, and what range it was in. I don't know as all them sections were marked off, but that grant, sir, was surveyed, had been surveyed and blazed, not only the section lines but the grant lines had been surveyed and blazed.

Q. Had the section lines also been blazed?

A. Yes sir, the section corners was there. I don't know so much about whether the lines was run or not, but the section corners were there.

Q. Were all of the section corners there?

A. I won't say all of them.

Q. How many of them?

A. I couldn't say.

Q. Sections nine and sixteen and ten?

A. I know the corner of section sixteen was there, and I know the corner of section nine was there, the north-west corner of section nine was there.

Q. And the corner of section ten was there?

A. Well, I don't know whether it was or not.

Q. Do you know of any other corners besides those of nine and sixteen as being marked there?

A. Yes sir, I know where the corner of sixteen is, the north-west corner, and the south-west corner of section nine.

Q. Were they put there by the United States surveyors?

A. I can't tell you whether they were or not; I suppose they were; they were numbered.

Q. Were they noted?

A. They were numbered as section corners, just like the United States survey does it, they surveyed and numbered them.

Q. Were the numbers on those corners just like your homestead section?

A. On the corners of the section it was, but not on the grant corners.

325 Q. How was the grant corner marked?

A. Why, just a lightwood knot taken and blazed on four sides, and squared up and drove down in the ground.

Q. But those other sections there had their numbers marked on them?

A. The sections I speak of did, I don't know whether they were all there or not.

Q. Is that the way the sections of public land are marked?

A. Yes sir, where they haven't been destroyed.

Defendant objects to the last question and moves to strike the answer thereto on the ground that same is not the best evidence.

Redirect Examination.

By Mr. Haskell:

Q. I understood you to say the grant lines were outside of these sections?

A. Outside of the sections.

Q. And distinctly shown by the marks?

A. I won't say whether it was the grant line or not. There was a plain line running north and south.

Q. What you recognized as the grant line?

A. What we recognized as the grant line, in getting the quantity of the land.

Q. How were those grant lines marked outside of the section lines?

A. They were blazed, like any other line.

Q. Did they show plainly?

A. In some places they did and some they didn't.

Q. Where did you come from to testify here?

A. I come from Kissimmee—from Campbell's Station, eight miles below Kissimmee.

Q. When did you start?

A. I started this morning.

Q. You are going back tonight?

A. Going back tonight sir.

326 One L. J. OWENS was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name, age and residence.

A. Well, my name is L. J. Owens: my age is nearly fifty-two, I will be fifty-two on the fourteenth day of next March.

Q. Your residence?

A. My present residence is Palatka.

Q. Where and in what neighborhood were you born and raised?

A. Well, I was born and partly raised in McIntosh County, Georgia, and later my father moved to Apling County, Georgia, and we moved to Florida. We moved to Florida in 1870, in December, 1870.

Q. What neighborhood did your father move to in 1870?

A. He moved to what is now Cacia.

Q. What county?

A. It was then Orange, now Lake.

Q. Orange County, Florida?

A. Florida, yes sir.

Q. State whether you know the property called the Teresa Rodriguez grant, designated on the United States surveys as Section 37, Township 19, south of Range 28 east, and Section 41, Township 19, south of Range 29, a tract of land containing 5,486.46 acres of land, and commonly known as the Powell grant in that neighborhood, formerly in Orange County, now in Lake County, Florida.

A. I am very well acquainted with it.

Q. How long have you known this particular property, and how near did you live to it?

A. The first time my attention was ever called to it was in '72, in the fall of 1872.

Q. How near did you live to it?

A. A little less than a mile and a half.

327 Q. And how long did you live in that neighborhood, up to what time?

A. Since December, '70, until two years ago, within a mile and a half, less than a mile and a half, of the grant.

Q. Was there anybody on this property when you first knew it?

A. When I first knew it? When I first knew it as being the Powell Grant?

Q. No, when you first knew the property.

A. There wasn't when I first traveled over it, because I didn't know what property it was; when I first knew the property there was no one on it, but when I first knew it as the Powell grant, in 1872, there was.

Q. Who was on it then?

A. The Powells, the old Parson Powell, and—

Q. (Interrupting) What was his name?

A. George C. And his son, George W., and W. R. Lassiter.

Q. Who is W. P. Lassiter?

A. One of his son-in-laws, one of George G. Powell's sons-in-law.

Q. Do you recollect clearly when they went on that property?

A. Not exactly, sir, because I was in Orlando at school at the time they went on it. I went home in December. I was going to school in '72, in Orlando, and I went home Christmas, and they were then preparing to build a mill—had built a mill.

Q. What had they done from the time you had gone to school, and at this time, what had been done on this property?

A. Well, I didn't go to the mill, but as I passed it I met some of the boys and found out they were building a mill there. That is what I understood they were doing, building a mill.

Q. There was work going on there?

A. Work going on, yes sir.

Q. Did you see any houses or anything there?

A. Yes.

328 Q. What did you see?

A. Right at that time, I think it was in '72, December, '72, I think it was Lassiter's house. I think was the only house I noticed right at that time.

Q. Now, state what you know about what the Powells did on that property from then on.

A. Well, I can state it in part. They built their mill on the spring run, and sawed lumber, ginned cotton, ground corn.

Q. How many families of the Powells, or of those people there, were there?

A. There was George C. Powell and George W. Powell, William P. Lassiter, and William Slade I believe was the only distinct families.

Q. What sort of a place did the old man Powell have, and where was it?

A. Well, he had two places. He first built on the south side of the mill run, about a quarter of a mile from the mill. Later he built on the north side.

Q. How large a place did he put on the south side? Did he have any clearing, or anything of that kind?

A. Only a yard, I think possibly an acre, inclosed.

Q. What sort of a house?

A. A log house.

Q. Any barns?

A. Well, his barns were none of any note, none that I remember specially.

Q. What sort of a place did George W. Powell have?

A. Well, he kept building. He lived quite a while on his place where he first settled, and kept building. His houses were not large, but he had several buildings, barns and dwellings and small outhouses.

Q. How much cultivated land did he have around his place?

A. I don't think he had exceeding five acres.

Q. What sort of improvements did he make on this place? What did he have there?

A. Why he was attempting to raise an orange grove.

Q. Did he cultivate crops of any kind?

329 A. Yes, he cleared it up and cultivated crops. He set the place out partly in orange trees.

Q. Did he continue to cultivate this place?

A. While he remained there, yes sir, until he sold it.

Q. Who did he sell to?

A. He sold to Smith, I believe, or Smith and Clifford.

Q. Did the old man have any orange trees at either of his places?

A. A few on the last place, a few, I believe, as well as I remember. They never did amount to anything, never did make trees.

Q. Do you remember the house that Slade built for the old man?

A. Yes sir.

Q. Where was that?

A. That was the extreme north house of all their houses. It was on Section Nine—where Section Nine would have laid on the regular survey.

Q. What part of the grant was it on?

A. It was about half a mile east of the west line of the grant, about the center—no, it was nearer to the north than to the center.

Q. Where was the mill on the grant?

A. The mill would have been about on Section Nine. It was about half a mile east of the west line of the grant.

Q. About half a mile east?

A. Yes sir, and near the center; it would have been near the line of Section Sixteen, the line dividing Sixteen and Nine, about half a mile east of the west edge of the grant.

Q. State whether you knew the lines of this grant?

A. I am well acquainted with them.

Q. How did you know them?

A. Well, in the first place I had a chance to see where one of the lines was when Mr. Beardall was making a survey. I forget what year that was. That must have been
330 early in the '90's. Mr. Beardall and Mr. Thomas, a man by the name of Ed. Thomas, and I forget the names of the other parties, they were all strangers to me at the time. It was the first time I had ever met them.

Q. Who were they surveying this land for?

Mr. Dewhurst:

We object, unless he knows of his own knowledge.

A. Well I understood it was for Sanford. It was Sanford or the Colonization Company. I couldn't be positive which, but I think it was Sanford. It was the first survey that I ever knew made of it, and I was with them for an hour or so.

Q. How were these grant lines designated? How were they marked? How could you tell it was the grant line?

A. Why, by two heavy blazes, as a rule, on the trees.

Q. On the line running how?

A. On the line running east and west and north and south.

Q. State whether these grant lines were altogether outside

of what you have called Section Nine and Section Sixteen, and these section lines?

A. All the way around the grant.

Q. All the way around the grant they were outside?

A. Yes, sir.

Q. And about how far from the lines of the sections?

A. Why, it varies. Seventy yards or more all around. I believe.

Q. It is pretty near that?

A. Pretty near that all the way around.

Q. Now, Mr. Owens, please state what you know about the lumbering of timber from that grant, the sawing of timber and so forth by the Powells. State when you first knew it and what they did.

At this point and before the above question was answered, this witness was temporarily called away from the hearing and was excused, the following testimony being taken in his absence with the understanding that he resume the stand and complete his testimony later.

331 One ROBERT ROSE was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name, age and present residence?

A. My name is Robert Rose. I was born in October, '52. I would be about fifty-seven. My present address is Cacia, Lake County, Florida.

Q. How long have you lived at Cacia, Florida, or in that neighborhood?

A. I have lived at Cacia, with the exception of two years, ever since 1870.

Q. What were those two years?

A. I was in Tennessee those two years.

Q. What years were they?

A. They were '75 and '76.

Q. Please state whether or not you know the property

called the Teresa Rodriguez Grant, designated on the United States surveys of public lands as Section 37, Township 19, south of Range 28, East, and Section 41, Township 19, south of Range 29, East, commonly called the Powell Grant, in the neighborhood of Cacia, a tract containing 5486.46 acres?

A. What do you want me to state?

Q. Whether you know that property?

A. Well, all I know about it is about Powell hired me. I think in the first part of November, '72, to work in his mill.

Q. Do you know where the land is?

A. Yes, sir; I know where the land is.

Q. What did you do? What Powell was that?

A. Well, I think it was John C. It was the Preacher Powell, I mean. I get the names mixed. It was the old man, Preacher Powell.

Q. George C. Powell was the man?

332 A. That's what I think it was, George C. Powell. That's what I said, wasn't it?

Counsel:

You said "John."

A. I should have said George. I knew him just as well as could be.

Q. What did you do? You helped the Powells about the mill?

A. I was rolling sand, helping to make a mill dam.

Q. How large a building was the mill building that they put there?

A. I couldn't answer that question, because I was not there when he made the building. I was only making the dam.

Q. He had already made the mill when you got there?

A. Oh, no, he had just commenced. I got through with him before he built the building, you understand. I know he built a building, but I couldn't describe how large it was. I know he had a mill, because I have been to it many times, hauled lumber from it.

Q. About how large a structure was it? You can tell to the best of your recollection?

A. Well, I would have to guess at that. I wouldn't know what to say in regard to the dimensions of it. He had a sawmill and a ginning house attached to it. I suppose it was

probably 25x30, something like that, in the neighborhood of that.

Q. Did they grind corn at that mill?

A. Yes, sir; they ground corn there.

Q. Do you know where George C. Powell lived at that time?

A. Well, he lived right north of the mill, the mill site.

Q. What were there of Powell's family?

A. Well, there was George Powell and his wife, and a lot of children, of course, I couldn't enumerate them. There was Lassiter and his family.

Q. Did each of them have a house?

A. Mr. Lassiter had a house and Mr. George Powell had a house, and his father, George C., had a house.

Q. Separate places?

333 A. Yes, sir; separate places.

Q. With clearings around them?

A. Yes; clearings around them.

Q. State whether or not they cultivated these places?

A. Yes, sir; they had little patches of stuff there.

Q. Did they have any live stock?

A. Well, I think they had a team, something like a horse and may be a few oxen. I don't know about that.

Q. Did they have oxen?

A. Yes; I remember that they had oxen there.

Q. What did they use the oxen for?

A. For hauling lumber to the mill.

Q. Did they cut lumber at the mill?

A. Yes, sir.

Q. What became of the lumber they made?

A. They sold it around. I had a house made of it, myself, a frame house, one of the first houses in Orange County.

Q. How long did the Powells stay on that property there?

A. Well, now, I think the old man stayed there until some time in '79, and I think George left there about the same time, because in the winter of '79 old man Powell married my wife and myself, and he was living there then, and George was there.

Q. Do you remember where the old man went to, he and his wife?

A. I couldn't remember that. He went south, somewhere.

Q. Who came for him, if anybody?

A. I don't know who came for him.

Q. You knew Lassiter, did you?

A. Yes; I knew Lassiter.

Q. Did you know Slade?

A. Yes, sir.

Q. What did Slade do?

A. Slade bought the mill of Powell or made some kind of a trade with him, and he run the mill for some time afterwards, after old man Powell left. I couldn't say how long he run the mill, but he run it for a year or two, anyway.

Q. Do you know L. J. Owens?

334 A. Yes, sir.

Q. Did he ever run the mill?

A. I think he did, but I think he run it in my absence, during the two years I was gone.

Q. Now, where did they get the timber that they sawed in this mill from?

A. Well, I suppose they got it, as far as I know, south of the mill site, off the grant.

Q. Do you know the lines of that grant?

A. No, I don't know the lines. I know what is said to be about the lines. I am no surveyor, and I don't know about that, but I know about what is considered to be the Powell Grant lines.

Q. Did they cultivate these farms regularly?

A. While they were there, these families, I think, sir.

Q. What sort of improvements did they make on these places?

A. Well, I think that George Powell and the old man might have planted a small grove. I think they started a small grove around their place. They didn't go into the grove business very heavy, because they had their attention on the mill, but they had their little garden patches, peas and potatoes and things like that.

Q. They had that regularly every year?

A. Regularly, every year, yes.

Q. Until they went away?

A. Until they went away, yes.

Q. Were their places enclosed, the fields that they cleared?

A. Yes, sir.

Q. How much of a house did Lassiter have?

A. Lassiter I don't think he had over a couple of acres.

Q. How much did George W. Powell have in his enclosure?

A. George W., I think, had may be six or seven acres.

Q. And the old man?

335 A. Well, the old man had about, I suppose four or five.

Q. Did the old man have more than one place or only one place?

A. I don't know about that. I know he had one place, the place he lived on.

Q. Where was that located?

A. That was located right north of the mill site.

Q. North of the mill stream?

A. Yes; the mill stream.

Q. Where did these cattle and oxen graze and pasture?

A. Well, they grazed out on the woods there, on the grant woods.

Q. Around about the mill site?

A. Yes, sir; I think they fed them, you know, some, and let them out at night.

Q. Who did the Powells sell the property there to, among these sons-in-law and sons?

A. Well, they sold to Smith, I think, C. T. Smith, sold one tract.

Q. What did Smith do with the tract?

A. Well, he planted a grove out on it.

Q. Did he cultivate it?

A. Yes; he cultivated it and raised a grove on it.

Q. Where was that located?

A. That was located a little east of north of the mill site.

Q. Was that regularly cultivated while Smith had it?

A. Yes, sir.

Q. Do you recollect when that was sold to Smith?

A. I do not—let's see—Smith bought that place some time, I think—It seems to me he was there about a year or a year and a half, something like that.

Q. Who had it after him?

A. He took Lon Royal in as a partner, this Royal that is here, he took Royal in, Smith did, and they afterwards sold to a man named Francis Raymond. Francis Raymond mort-

336 gaged it to a preacher by the name of Pendleton, and now the Pendleton heirs claim it.

Q. Who got the George W. Powell place?

A. That is what I can't tell you, I don't know who got that place.

Q. Who lived on it last?

A. Last?

Counsel:

Yes.

A. I don't know that either, I couldn't answer that, because I don't know, unless Powell did.

Q. How long did George W. Powell stay there after the old man had done or given up?

A. I think they left about the same time—no, George left before the old man. I think the old man was there last.

Q. Do you know who the Powells sold this grant property to?

A. Well, I suppose he sold it to—Mr. Powell sold to Sanford, H. S. Sanford, I think.

Q. Who did Sanford have out there in charge of that place, if any one?

A. Well, that's what I don't know. I couldn't tell you that.

Q. Who have you known on that place in charge of it since the Powells left?

A. I have known Ed. Thomas, he was on it. The time Ed. Thomas was on it was after Sanford sold it to the Colonization Company.

Q. Can you place the year, about the year, that Thomas was there?

A. I think I can by studying a little. I think it was somewhere about '88—'88 or '98.

Q. '88 or '89?

A. Yes, sir; somewhere about there.

Q. How long was Thomas on there?

A. I don't know. It seems to me he was there about a couple of years, if not longer.

Q. Who was it generally understood around the neighborhood that he was on there in charge for?

A. Colonization Company.

Q. The Florida Land and Colonization Company?

A. Yes.

Q. Do you know who their agent was?

A. I think F. H. Rand or Sanford was the head man.

Q. Did you know William Beardall?

337 A. I did not know him, personally, I just knew of him and had seen him.

Q. Did you see him out there?

A. No, I never saw him out there, only during the county site election, he was out at our poling place once. I had heard of him being out there, though.

Q. Besides Ed. Thomas who else was in charge of that property or possession?

A. Well, John W. Wofford was in charge of it or Charlie Wofford, Charlie Wofford come first, I think, and then Thomas and then Boykin.

Q. What Boykin is that? What are his initials?

A. I don't know. I know him well, but I never got his initials. I think it is J. W., but I am not certain of that.

Q. Can you state how long Woford was there?

A. Well, Wofford was there very near two years.

Q. Was he there immediately after Thomas, according to your recollection?

A. No, I think he was after Boykin, Charlie Boykin.

Q. How long was Boykin there?

A. I couldn't answer that question at all, one way or the other, because I don't remember exactly how long. I know he was there.

Q. Did you know a man by the name of McIntosh?

A. Yes; I knew McIntosh. He was on there. I may have got it a little mixed there. I don't know whether McIntosh comes ahead of Charlie Boykin or not, but I think he was there after Charlie Boykin. I am not certain on that point.

Q. What part of the grant did Thomas live on?

[A.] He lived on the northwest part of it, I think.

Q. Where did McIntosh live?

A. He lived on the south part, somewhere on the south.

Q. Do you know whether McIntosh built him a

338 place or not?

A. No; I don't know that, even.

Q. You know there was a place there?

A. Yes; I know he was on the place, but I don't know what kind of a place he built.

Q. Who was it understood that all these parties were living on that place for?

To which question complainant objects, on the ground that same calls for hearsay evidence, and is immaterial, irrelevant and improper..

A. Why, the Colonization Company.

Q. The Florida Land & Colonization Company?

A. Yes, sir. Now, as to John Woffird [Wofford] John Wofford was on there for the Wilson Company, as near as I can remember it. You said "those parties," you included all of them that I was talking about. John Wofford was up there for the Wilson Company. You see, it has been a long time ago, and a person is liable to get a little mixed, you know.

Q. State whether these parties kept people from trespassing on these lands or not?

A. As far as I know they did.

[Q.] That is what it is understood they were there for?

A. That is what everybody in the neighborhood understood they were there for, yes, to keep off any trespassers.

Q. During all the time you knew this property was there anybody else exercising control or occupancy, or use of the timber or any part of this grant, other than the Powells, Lassiter, Slade and these parties that the Powells sold to Henry S. Sanford and the Florida Land & Colonization Company and the present ones, the Wilson Cypress Company?

A. Whether they used any of the timber?

Q. No; whether there was any one else other than these parties that were using the timber or occupying the land or doing anything on it?

A. No.

Q. Nobody at all?

339 A. No. Now, I can tell you this, on that point, I can tell you this Mr. Rand, the head of the Colonization Company, sold cedar there to the two Anderson boys. I don't whether you want that or not.

Q. Who has been on there, on that property, for the Wilson Cypress Company since they have owned it?

A. Well, I think Charlie Boykin, John Wofford and Mr. Boykin—the old man Boykin—three, that I know of.

Q. What are there [their] names?

A. Charlie Boykin—McIntosh was there; there was four.

Q. I mean for the Wilson Cypress Company?

A. I think McIntosh was. Charlie Boykin and the old

man Boykin, J. W. Boykin, I think it is, I don't know the initials. I know him well enough, but just know him as Mr. Boykin. Let's see, now—Mr. McIntosh—I may be mistaken about him. He may have been for the Colonization Company. He took Thomas' place, I think that is the way of it, he took Thomas' place, and then comes Charlie Boykin, and then the present one. I think that is the way it was.

Q. Now, how have you known to take timber from that property since you have known it?

A. Well, I have known Henry and Ben Anderson to take cedar from there. I have seen them hauling it.

Q. When was that?

A. That was, I think, '94 and '95.

Q. Under whose authority were they acting?

A. F. H. Rand of Sanford?

Q. The agent of the Colonization Company?

A. Yes; the agent of the Colonization Company.

Q. Any one else?

A. No; well, now they did cut cedar, but they cut some cabbage boots there, too. I think there was a number started there, and they stopped, you know. There was a fiber factory here and they went out there to get them and somebody stopped them. They went there to cut cabbage boots
340 and somebody went down there and notified them to get off there, and they got off. They went out with teams and mules at Cacia, and a man there went—

Q. This is something you heard?

A. Yes. Well, I know the men went there. I saw them with the teams and tools going to the swamp to cut them, and the next day I was there and they had left. I asked this man what was the matter and he said they had ordered them to get off that they had no authority, that they claimed they had authority from Rand to come there and cut boots from the land. And they were ordered to get off and they did get off. I met them going down to cut with a gang of men. I think they were ordered to get off and they got off.

Q. Who was in charge of the Florida Land and Colonization Company, then?

A. Mr. Rand of Sanford.

Q. Who was in charge for them on the property?

A. I think Charlie Boykin was in charge, then. Anyway, a man that had authority ordered them off.

Q. Do you know whether the Powells and Slade and parties under them took lumber or timber from this grant, different parts of it, to cut in the mill?

A. Well, I suppose they did, yes.

Q. You saw them cutting and hauling?

A. Yes, I saw them and not only that, I had a house that was built out of the lumber, the first lumber that was cut there, some of the lumber.

Q. You bought it from Powell?

A. Yes, sir; not Powell, but Slade.

341 Complainants here move to strike all of the testimony of this witness, on the ground that the facts testified to do not constitute adverse possession, either at common law or under the statute; and further move to strike all that part of the witness' testimony as to facts occurring prior to the issuance of the patent for the land in 1895, because the same is irrelevant and immaterial.

Cross-Examination.

By Mr. Dewhurst:

Q. Mr. Rose, are you quite certain that this Ed. Thomas didn't go on the land until after the Colonization Company claimed it?

A. Until afterwards?

Q. Until after the Colonization Company claimed it. You stated in your testimony that Sanford didn't put him on, but that the Colonization Company put him on there?

A. Well, that was the way I have understood it all the time. I know he was there.

Q. I am only trying to get at the date. Do you think it was after the Colonization Company got it, after Sanford sold it to the Colonization Company?

A. Yes, sir.

Q. What was the character of Charlie Boykin's occupancy of the land?

A. Well, that I couldn't answer.

Q. Well, did he live on the land.

A. Well, I don't know of my own knowledge that he did. I have understood from everybody that he was in charge of it

and was living on it, but I never went to his house or anything of the sort.

Q. Do you know whether old man Boykin was living on the land or not?

A. It was the same way as with Charlie. I have understood all the time that he was living on the land.

Q. You don't know of your own knowledge?

A. No; not at all. I never went down where he lived. I understood all the time that they had Charlie on there, Charlie and the old man, also.

342 Mr. Dewhurst:

Complainant moves to strike all the testimony of this witness in regard to the Boykins being on this land, on the ground that same is hearsay.

Cross-Examination Continued.

Q. What occupancy did Mr. McIntosh have of the land?

A. Well, I don't know what kind of quarters he had, either.

Q. You never saw it?

A. No, sir. Now, as to Thomas, I saw his house and saw him on it, but these other men I only know about from hearsay, you know, and general talk of them being in charge of it.

Q. How big a house did Thomas have?

A. Why, he lived partly in two houses. He had one house first. He lived in old man Powell's, George C. Powell's house, a while, until he could build him a small house. He built one I suppose 10 by 12, something like that. I never was right at it. I was close to it, in a hundred or two hundred yards. I never went in it and never noticed what kind of a house it was at all.

Q. How much of a patch of land did Thomas cultivate?

A. Well, only a little patch an acre or two, that he had chufers or something on. He hunted a good deal and kept dogs. He never pretended to raise much of anything. He did have a little patch of chufers, I think.

Q. Do you know what part of the grant Anderson cut any timber on?

A. Well, from a general knowledge, I think it was about the east side.

Q. Do you know of your own knowledge?

A. I know this. I have seen the stumps and I have seen him hauling it out to the station. I have never seen him cutting it but I have seen him hauling it, and I have seen the cedar after it was hauled to the station. It was near the central portion, I think.

Q. Do you know who gave the fiber company at this place authority to cut there?

A. I do not know that. I know I suppose there
343 was nobody give them authority, by their being scared off of there.

Q. That is your belief?

A. Yes; that is my belief, but I know I saw them go down there with their teams, and I asked a man what they were going to do—

Counsel:

Never mind what anybody told you. That would not be the best evidence.

Q. Did you ever meet a man by the name of Martin, a lawyer from Washington?

A. Yes; I have met him.

Q. Did he ever stay at your house?

A. No; he never stayed at my house.

Q. Where did you meet him?

A. I met him at Owens' store, at the post-office and store. I met him on the road once or twice.

Q. Do you know whether he went on this tract of land at all?

A. I think he did. I met him on it one time. I met him one time, I think, on the west part of it.

Q. On the grant?

A. Yes, sir.

Q. What was he doing then?

A. He was just travelling the road then, up to J. P. Owens', across the land.

Q. Do you know whether he posted any notices on it?

To which question defendant objects, on the ground that same is not proper cross-examination and is immaterial and irrelevant.

A. I didn't see him put them there, but I saw the notices afterward.

Q. You saw the notices?

Same objection as above.

A. Yes, sir.

Q. What was the character of the notices?

Same objection as above.

A. I couldn't tell you that.

Q. Did you read the notices?

Same objection as above.

344 A. No; I didn't read the notices. I was only told by other parties that Martin had put the notices up, and I saw them there. I saw the notices and saw that they were not the Wilson Company's notices. The Wilson Company used notices in large printed letters and I noticed it was different, they put a large card up, and these were small ones, as I remember, and I just supposed they were Martin's notices.

Defendant here moves to strike what this witness has said in answer to the above questions as to notices, on the ground that same is not proper cross-examination and is irrelevant and immaterial.

Cross-Examination Continued.

Q. Were these notices warning people against trespassing on that land?

To which question defendant objects, on the ground that same is not proper cross-examination and is immaterial and irrelevant.

A. I suppose they were. I didn't read them.

[Q.] You didn't read the notices?

Same objection as above.

A. No, sir.

Q. About what time was it that Mr. Martin came there?

A. Some time in '95.

Q. About '95?

A. I think so, yes. I know it was after the freeze of '94.

[Q.] It was after the freeze?

A. Of '94; yes, sir.

Q. You met him on the grant?

A. Yes; I met him and Owens coming across the grant, coming the public road. The public road runs across the north east corner of the grant. That was the only time I saw him on the grant.

Q. Did you ever have any conversation with him
345 on the grant?

A. No, sir; I didn't have any conversation with him there. I talked to him at the store, but I didn't talk to him about what his business was here or anything of that sort.

Q. At the time Mr. Martin was there was anybody living on the grant, in 1895?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

A. It seems to me that Thomas was on the grant then. That I couldn't say, positively. I noticed these two negroes were cutting cedar there at the time Martin was there.

Q. Who was?

A. These two negro men, the Andersons, were cutting cedar there at the time Martin was there.

Q. Do you know whether Martin stopped them?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination, and calls for evidence not the best evidence.

A. No; I do not know whether he did. I know his agent, John Owens ordered them to stop.

Q. Didn't Mr. Martin appoint John Owens as his agent?

A. So I understood.

Defendant moves to strike the last answer of the witness

on the ground that same is immaterial and irrelevant and hearsay.

Q. Where was John Owens living?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

A. At Cacia.
Q. How near the grant?
A. I suppose a mile and a half from the north line, probably about a mile and a half.

346 Redirect Examination.

By Mr. Cooper:
Q. Mr. Rose, did you see the Boykins on or near this land at the time you understood they were the agents in charge of it?

A. On or near it?

Counsel:
Yes.

A. Oh, a great many times.
Q. Did you see them on the grant?
A. Yes, sir; lots of times.
Q. What did they seem to be doing in reference to the grant when you saw them there?
A. Well, the only time I ever saw them there was on the road that runs through the grant. I would either meet them coming from Cacia or going, one way or the other, was the only times I ever saw them on the grant. Mr. Boykin used to come over to Cacia quite often, and I would meet him right on the grant as he was coming on the public road.
Q. Was this at the time you say you understood they were in charge of the land?
A. Yes.
Q. You state that you saw Mr. Martin once at the store and once on the road?
A. Well, I may have seen him several times at the store.

I know I met him several times, but I saw him one time on the land.

Q. Was that on the road?

A. Yes; he was driving across on the public road from Sorrento to Cacia. It runs across the northeast corner.

Q. The only time you saw Mr. Martin on the grant was the time you saw him on the public road that runs through the grant?

A. Yes; that was the time I met him on it.

Q. Was that within a day or two after you saw
347 him at the store?

A. No; it was a day or two before—a few days before.

Q. A day or two before you saw him at the store?

A. Yes.

Q. So far as you, personally, know that two or three days was the only time he was in or about that neighborhood, as far as you know, personally?

A. Well, I think he was there probably a week, but I didn't see him any more. He was around there and back and forth with Owens, and as I understood at the time he was going back and forth with Owens.

Q. Not what you "understood." I say, the only time you know of, personally, was that two or three days?

A. Yes; two or three days is the only time I know of.

Q. You never saw Mr. Martin, personally, doing anything on the land?

[A.] No, sir; I never did.

Recross Examination.

By Mr. Dewhurst:

Q. Well, I will ask you: the only time you saw Boykin on the grant you saw him on the public road?

A. Yes; that was the only time. I saw him a good many times, but it was on the public road.

One ALONZA ROYAL was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name, residence and age?

A. Alonza Royal, Cacia, fifty years old; fifty last October the 12th.

Q. Please state whether or not you know the property known as the Teresa Rodriguez Grant, designated on the United States Surveys as Section 37, Township 19,
348 south of Range 28, East, and Section 41, Township 19, south of Range 29, East, called in the neighborhood of Cacia, the Powell Grant, a tract of land containing 5486.46 acres of land, I ask, do you know that tract of land?

Q. I mean the whole thing?

A. Did you call as many sections as there is there?

Counsel:

Yes; I called all the sections there are of it.

A. Let's see. I forget what you did call.

Q. Well, it is the Teresa Rodriguez Grant. Do you know that property?

A. Yes; I know that property.

Q. The Powell Grant or Teresa Rodriguez Grant?

A. Yes. It goes by the name of Seminole now, of late years. That is right, the Powell Grant. I have heard it called by several names.

Q. How long have you lived at Cacia?

A. Since the first year of the war, '61. I believe that was, wasn't it?

Q. Since '61?

A. Yes, sir; that is getting back pretty far, but I can remember it.

Q. Please state who were the first parties you knew to occupy that tract of land?

A. Well, do you mean to work on it or to occupy it?

Q. Both, either or both?

A. The first man to do anything was Tumling, Taylor and

Jennings. They cut timber on it. That was when Stark owned it.

Q. That was when John Stark owned the property?

A. That that lived over here—Stark—that was his name.

Q. When was that?

A. That has been a long time. It must have been two or three of four years after the Civil War, something like that, I was small.

Q. After that who went on the land you know
349 of?

A. Well, the first man to do anything was George C. Powell, old man Powell, he was the first man.

Q. What did he do?

[A.] Well, he started that water mill there and they improved, cleared land and traded around among each other. He had sons and sons-in-law, and they would hire a man there occasionally?

A. State whether they ran the mill they made there.

A. Yes, sir.

Q. What sort of a mill was it?

A. Well, it was a saw and grist, or corn mill and gin.

Q. Did you ever work in that mill for them?

A. Not for them, I worked for my father.

Q. Your father is who?

A. Ivey Royal.

Q. Who did he lease or hire the mill from?

A. He bought lumber of the mill and they couldn't get it out, from some cause or other. He had the logs cut and put at the mill, and he went to sawing it.

Q. Under whom did you do that? Who gave him permission to do that?

A. Mr. Slade.

Q. William Slade?

A. Yes, sir.

Q. Who did you buy the lumber of, the timber?

A. That I can't say. My father done that.

Q. You don't know anything about that?

A. I don't know anything about that.

Q. Where was the timber taken from?

A. Off the grant.

Q. What year was that in?

A. Well, I don't know, but that must have been some-

where between '70 and '80. It must have been some time between '70 and '80.

Q. How long did the Powells and those connected
350 with them occupy and cultivate and improve their places, the places you have testified about?

A. Well, that I won't say. They must have been there in '72—I think they went there in '72 or '73, and stayed there in until about '80, I guess '78 or '80.

Q. Did they stay there continuously? Were they on that place all the time?

A. Some of them did.

Q. The places were carried on all the time, were they?

A. Well, now, I say they was all there—they wasn't all there—Slade was there. He was the last one to leave there. He run the mill after the others left there, some two or three years.

Q. Which of them had places that they cultivated for corps [crops] and trucking and things of that kind?

A. Mr. George C. Powell and then the other one called G. W., the young man, he had a little place there cultivated.

Q. Did Lassiter have a little place there, too?

A. Yes, sir; but I don't think he done much. He didn't stay there very long.

Q. Did they sell to other parties that had places there, too?

A. I don't think they sold any, only among themselves, to the sons-in-law or something like that, so I have heard—I don't know.

Q. When you first knew that property, what did they used to haul their timber with that they were lumbering on the grant?

A. Oxen.

Q. The old man had oxen?

A. I don't know who owned them, but they were there.

Q. They kept them there?

A. Yes, sir.

Q. Did they have any horses?

A. I think Mr. Slade got some horses. He hired one down here, I know from somebody, and carried it out there. He had one.

Q. Was there anybody else, other than these
351 Powells, during that period from '72 to '80, as you

say, that were doing anything on that grant other than them?

A. No, sir.

Q. Was there any one during any of that time that claimed to own the property, except under old George C. Powell?

A. No, sir; not that I know of.

Q. They had the use and occupancy of that property all the time from the time they went there in '72 to the time they left, didn't they?

A. Yes, sir; there was some of them all the time.

Q. How long did they keep up the cultivation on the places they cleared?

A. Well, they cultivated as long as they stayed there. I won't be positive as to the dates I am telling, now, but I am telling it the best I can.

Q. What did the old man do on his place? What sort of improvements did he make on his place?

A. Why, I don't think he did anything more than garden what vegetables he needed for his own use.

Q. Do you remember whether or not he grew some orange trees there?

A. Well, that I don't know, I won't say about that.

Q. How about George W. Powell's place, his sons'?

A. He set out a few, but how many I won't say.

Q. He cultivated orange trees there, though, did he?

A. Yes, sir; he started some.

Q. Did he sell that place?

A. Yes, sir.

Q. Who did he sell it to?

A. Smith and Clifford.

Q. What did they do with it?

A. They worked a little, tried to make garden and made a failure of it, and then I taken it and worked it four years and a half.

Q. What did you do with it?

A. I made a grove there. They set out a few trees and when I got hold of it I taken a half interest in it and I finished out the place.

Q. How much of a grove did you make there?

352 A. I never did measure it exactly, but there must have been twelve or fifteen acres of it.

Q. Do you recollect the Pendleton property?

A. That is it.

Q. That is the same property?

A. Yes, sir.

Q. How large a mill was there on this place, how large a structure?

A. Oh, it was one of these saws that works up and down, what they call a "sash" or something like that, a sash saw, I think they call it. Some call it a muly saw. I have seen it advertised as a muly saw. It was the only one I ever saw like that that I remember of.

Q. Do you know anything about where they got their timber from that they sawed in that mill?

A. Off that land.

Q. Off the land?

A. Yes. They did cut some off of United States land around adjoining them. You know the law on these questions gives the man a right to cut some for his own use off of United States land, and outside of that, they would cut the logs and have them sawed.

Q. Well, after the Powells went away from there who had this land, who claimed to own the land after that?

A. Sanford, Henry S. Sanford, I think his name was; it was a gentleman named Sanford, anyway. They sold to him and there was no one on it then for a while except myself.

Q. How did you happen to go on it?

A. Well I went in with Smith and Clifford. In the preliminary I was on for myself.

Q. You were the only one in possession at that time or on that land?

A. Yes, sir.

Q. Did any one else have possession of that land
353 or go on that land for any purpose until the Florida Land and Colonization Company put somebody there?

A. No; I don't think so until Mr. Beardal went out there and hired a man. You know old man Powell he had a little place out there, and you know after Mr. Beardall went out there he done some surveying there, and had this road put in.

Q. That was when Sanford owned it?

A. Yes, sir.

Q. Was it surveyed all around by Beardall when Sanford owned it?

A. Well, he surveyed around it while Sanford and the Colonization Company owned it; it was first Sanford and then the Colonization Company, you know.

Q. Mr. Beardall was surveying for both of them, was he?

A. Well, he was working for the Colonization Company, Beardall was.

Q. Do you remember Beardall being on the land there, surveying it for these parties?

A. Yes, sir.

Q. Did you help him?

A. Yes, sir; I helped him survey on the piece that I was interested in. I surveyed two days with him.

Q. Who did Beardall put in charge of that property?

A. Thomas. I think there was other parties there, but I didn't know them. He would occasionally come out with other parties, but Thomas was the only man I knowed. I think McIntosh come before Thomas, but McIntosh left. I don't know what the trouble was. There was a man or two out there. I think McIntosh was one of them.

Q. What did McIntosh do on the place?

A. I don't think he did anything more than look after it.

Q. What do you mean by looking after it, keeping people off?

A. Yes, sir; that was what I understood.

Q. What was the neighborhood understanding
354 about what he was there for?

To which question complainants object, on the ground that same calls for hearsay evidence, and is immaterial and irrelevant.

Q. What did you understand about it, and how was it generally understood?

Same objection as above.

A. Well, I understood he was there to show the land and timber and so forth, if any one should come to look at it.

Q. What is your answer?

A. I understood he was there to show the land or timber if any one should want to look at it, I reckon.

By Mr. Dewhurst:

Q. To show it if anyone wanted to buy it?

A. Yes, they were continually trying to sell it, so I was told. I don't know.

Q. How long did Thomas stay on that place?

A. Well, I don't know. He must have stayed there four or five years.

Q. Where did he live when he was there?

A. On the property, but I would have to have a map to tell you just where he was. It was on the northwest quarter of the northwest section of the grant, but just what part of it I don't know, any more than it was the east side of it.

Q. What was Thomas doing there, and what was he there for and who did he represent?

A. Why, he represented the Colonization Company, I guess. I never asked him who he was there for. He was there to hold possession, or something like that, of the grant.

Q. He kept everybody else off, did he?

A. Yes sir, I guess he did. I never heard of anyone else going there to stay. They hunted on it, and such as that—I guess sometimes people did.

355 Q. Who cut cedar there?

A. Well there were two Andersons boys, darkies, cut around and about on it, picking up some cedar.

Q. Did you ever buy any timber on that grant yourself?

A. Yes sir.

Q. Who did you buy it of?

A. Beardall.

Q. Beardall?

A. Yes sir.

Q. When was that?

A. I can't remember the date.

Q. Was that before he came out to make the survey, or after?

A. That was after, after the Colonization Company got it in their hands. I bought through him and Mr. Rand.

Q. What did you buy, and where did you get it from?

A. Why, I bought cedar, but we didn't cut much.

Q. What part of the grant did you cut it off of?

A. We were to cut it off the east side.

Q. On the east part of it?

A. Yes sir, on the east part.

Q. Whatever you could find, what you wanted?

A. Yes sir, and a lot of that that we got was when Powell had sold to White, years before that, and we went over and picked it up. That was the timber we got, most of it.

Q. Who did you pay for that?

A. Mr. Beardall.

Q. For the company?

A. For the company. But the dates, I don't remember them.

Q. You can't place the date at all?

A. No, I can't any more. We was shipping the cedar at the time Mr. Owens there shippped some oranges from the place there.

Q. The same time that L. J. Owens shipped oranges, from where?

A. From the Wekiva Landing, down here on the St. James River, by the Clyde Line.

Q. By the Clyde Line?

A. Yes sir.

356 Q. Where did you ship that cedar from?

A. The Wekiva Landing, the same place we shipped the oranges from, by the Clyde Line we shipped it.

Q. By the Clyde Line?

A. Yes sir.

Q. Where, to what point?

A. New York.

Q. Do you remember which of these men were on the land, in charge of that land, at the time when you got the cedar?

A. There was no one on it, I don't think, at that time. Mr. Beardall came out occasionally and looked around.

Q. Mr. Beardall was in charge of it?

A. Yes sir, he was in charge of it. Mr. Beardall never did live on it.

Q. He would just come out occasionally and look after it?

A. Yes sir, and after that he put this man Thomas on there.

Q. How long a time was it that Beardall had charge of that property in that way before Thomas came on?

A. Well, I don't know, but he had charge of it while Thomas was there. Thomas was under him.

Q. Thomas was under him?

A. Yes sir, so I have understood.

Q. Was Mr. Beardall in charge of it in the way you said, all the time that Sanford owned it too?

A. No sir, Sanford owned it before he come here. Mr. Beardall never had anything to do with it until the Colonization Company got into it, so I have understood.

Q. That was your understanding of it?

A. Yes sir, that was my understanding of it.

Q. Who followed Thomas in charge of that property and lived on the property right after Thomas?

A. I think it was Mr. Wofford, John Wofford.

Q. What part of the grant did Wofford live on?

A. Well, I would have to make a map of it to show you, but he lived south—

Q. Let me ask you another question. What was the eastern part of this grant, what was the nature of the
357 land?

A. Well it is cypress swamp, and what we call cabbabe glade. Do you know what the meaning of that is?

Counsel:

Yes.

A. That was it.

Q. Cabbage glade and cypress swamp?

A. Yes. And beyond, to the west, there was some little hammock.

Q. What was the character of the land on the western part of the grant?

A. Pine land, principally.

Q. Pine land?

A. Yes sir. Near the stream there was some hammock along there, and when you got in there a piece there was some cypress.

Q. Now state whether it was on the western part or the eastern part, or where it was, that Wofford lived?

A. He lived south of section two.

Q. In that township.

A. In that township.

Q. Would that be the eastern end of the grant?

A. That would be about middle way of the grant. That was one. And I'll tell you where the other place was. There was two places.

Q. Where was the other place?

A. At the Double Bridges, in the northeast corner of the grant. The Double Bridges on that creek.

Q. What sort of a house was there at these Double Bridges that he lived in?

A. What kind of a house?

Counsel:

Yes.

A. A palmetto shack—well, it was walled up with boards around.

Q. What sort of a place was the other place?

A. A palmetto camp or shack. There were no walls around that, except palmetto fans.

Q. What sort of a house was it that Thomas lived in?

A. He lived in a board house, but it was small.

Q. Who followed Wofford?

A. Mr. Boykin.

358 Q. What Boykin? Was it C. C. Boykin?

A. It was the old man, I don't know his initials.

Q. Old man Boykin?

A. The old gentleman, yes, old gentleman Boykin.

Q. What did he do there?

A. Well I don't know now. I was taken sick pretty soon after he come, and I hadn't been there to see him. I don't know.

Q. You don't know about that?

A. No. I was taken sick, this May will be five years ago, and I don't know what is on the grant. I don't know what has gone on since then. In the first week in May, (I don't remember just the day), I was taken sick, taken down so I couldn't get about, and I didn't go on the grant any more.

Q. Do you remember that Powell bargained the cedar timber to White?

A. Yes, sir.

Q. You remember that transaction, do you?

A. Yes sir, I was at work for White.

Q. Where did they cut that cedar from?

A. More or less all parts of the grant.

Q. Wherever they could get the cedar off it?

A. Wherever they could find a tree that would do they

went over and cut it down, and then taken them up, as long as they were allowed, but Sanford stopped that. The timber that we got, me and my brother, was timber that we picked up, that he had cut. I don't remember cutting but one tree of any size.

Q. Who did you get that timber from?

A. Mr. Rand and Mr. Beardall.

Q. For this company?

A. The Colonization Company. They were their representatives.

359 Q. Do you recollect clearly testifying in regard to this grant before L. A. Field and R. F. Kreigsman, commissioners, about nine years ago?

A. Hows' that?

Q. Do you remember your testimony being taken before L. A. Field and R. F. Kreigsman, commissioners, about nine years ago?

A. Yes, sir.

Q. Was the testimony that you gave at that time true?

A. I guess it was.

Q. Well, don't you know whether you told the truth or not, at that time?

A. Well, yes, I ought to have known better then than I do now.

Q. Then it was the truth?

A. Yes sir.

Q. You have been sick, have you not?

A. I have, yes sir, I have been sick, this May will be five years.

Q. Where did you come from to come here this time?

A. Cacia.

Q. How far is that from Sanford?

A. Oh, it is fifteen or eighteen miles, something like that.

Q. When did you start?

A. Oh, I don't know, this morning some time.

Q. You will return tomorrow?

A. Yes sir.

Complainats move to strike all of the testimony of this witness, on the ground that same is immaterial and does not establish or tend to establish adverse possession, either at common law or under the statute: and they further move to strike

all of the testimony of the witness as to facts prior to the issuance of the patent of the government to this land in 1895, as immaterial and irrelevant.

Cross-Examination.

By Mr. Dewhurst:

Q. You testified, Mr. Royal, in regard to the location of these places upon certain sections there. Are those
360 sections a mile square?

A. They are supposed to be, yes sir, they are supposed to be, but it has been surveyed around since then and some of them is a mile and some is more. That is the way it is.

Q. Those sections are according to the public surveys, are they?

A. Yes sir. They are supposed to be a mile square. I know all the sections are supposed to be that.

Q. And they are the sections surveyed by the United States surveyors?

A. I don't think that grant has ever been surveyed; it has just been surveyed around, if I understand it, according to the field notes; all these old grants was surveyed years ago, before the general country was, and this one was taken when the country was surveyed out, just taken as a grant, an old Spanish grant. I think in the field notes I have seen something of that kind.

Further Direct Examination.

By Mr. Haskell:

Q. Doesn't this survey show the grant line wholly on the outside.

A. Yes sir, it shows them.

Q. You are familiar with them and know them?

A. Yes sir, I am.

Q. It is surveyed all around?

A. Yes, it was surveyed by Mr. Beardall, he surveyed it around. You know, he went around, commencing at the northwest corner of it, around and back.

Q. Don't these lines show by the blazes on the trees, the old grant lines?

A. The blazes are there.

Cross-Examination Continued.

Q. Now, was section nine surveyed off?

A. No sir, it wasn't surveyed, it wasn't divided up. You see, section nine is the northwest section, I think.

361 Ain't that the northwest section? It lays out there in the west.

Counsel:

No, I am not talking about that. Do you know anything about how section nine lies in that grant?

A. Well, if you will give me a pencil and a rule I can tell you.

Q. Never mind that. Now, how much land did Mr. Powell cultivate?

A. Oh, he didn't cultivate, I don't believe, more than a half an acre, any more than where his house stood.

Q. How far from lands which were admitted to be United State lands did Mr. Powell live?

A. Well, from a quarter to a half a mile.

Q. When he turned his oxen out to graze did they graze on the public lands?

A. Well, I don't know. I guess they did sometimes.

Q. Wherever they wanted to go?

A. Yes sir, wherever they wanted to go.

Q. Who claimed this land on which you made a fifteen-acre grove or a twelve-acre grove?

A. Smith and Clifford, at that time. I was afterwards interested in it. It was Smith and Clifford's, and I taken a half interest. Smith first taken the whole thing, and then I went in and got a half interest in this sixty acres.

Q. You acquired a half interest in that land when you made a grove on it?

A. Yes sir.

Q. Did you claim any of the rest of that grant?

A. No sir, I had nothing to do with it.

Q. Only a twelve-acre grove, what was known as the Pendleton property?

A. Yes sir.

Q. Was that fenced?

A. Yes sir.

Q. Then you, when you occupied that twelve acres, didn't claim to own any other part of the grant, or exercise any right of ownership of any other part except the twelve acres you fenced?

362 A. No sir. I didn't get any pay for what I done. If I done anything I didn't get a cent from anyone.

Q. You stated in your direct examination that some of the timber that was saved by Powell was cut on United States adjoining the grant?

A. Some of it was, yes, by some parties. The way they did it, they would want so much lumber, and they wanted to furnish the logs. Some had teams and some didn't. They would go out on United States lands for it. You know most of them think they can go anywhere on United States land and cut timber for their own use, and they would go out and cut their trees down.

Q. As much as they wanted for their own use?

A. Yes, but they didn't sell it. I didn't know of any one cutting and selling any.

Q. Quite a number of people did that?

A. Oh, yes, a good many—not many, because there wasn't many here—but people all about the settlement did.

Q. Did you help Mr. Beardall survey this tract of land?

A. Not all around it. I saw him when he was there, and I helped him survey this sixty acres that I had an interest in.

Q. Were there any marks of any survey prior to that time that Beardall surveyed and marked the lines of this grant?

A. At places there was.

Q. At places?

A. Yes sir.

Q. About what time did Beardall make the survey of this grant?

A. Well, that I don't know. It was some time between '90 and '95, I think, as well as I can remember, but since I have been sick there are a lot of things that I used to could have told that I don't remember now.

363 Q. Well, how often did Beardall come out to look at this property?

A. Oh, once or twice or three times a year, something like that.

Q. Two or three times a year?

A. I would say he came three times a year. He would come sometimes.

Q. Two or three times a year, you did say?

A. Yes sir.

Q. Well, up to that time there was no one on the land?

A. Not until he got Thomas out there, and it was two or three years before he got Thomas there. He had McIntosh, this McIntosh that is dead, he had him before he got Thomas, to be there and show people if anyone should go out there, but McIntosh, I never saw him there.

Q. They got him to show people the timber if anyone wanted to buy it?

A. Yes sir, or anything like that.

Q. Now, you say it was two or three years after the Colonization Company bought this land that they put Thomas on it?

Mr. Cooper:

He didn't say that.

Mr. Dewhurst:

He said as soon the Colonization Company got it.

A. I think it was something like that. The Colonization Company got it—I don't know just when that was. There was lots of things done that I could only hear of, you know. Mr. Beardall, he went out there, and I believe he got Thomas to go there.

Q. And he surveyed it before he got Thomas to go on it, I understand you to say?

A. He didn't survey all at one time, he would survey part, and then come in here and stay a while, and then go and survey some more. And when he first commenced going out there Thomas didn't stay there, at first. Thomas moved there after he got through surveying it.

Q. About how long did Thomas stay on it?

A. He must have stayed there somewhere from
364 two to four years.

Q. Now, how much of a house did he have?

A. Oh, I would say ten foot square, a board shack.

Q. How much land did he cultivate?

A. None, any more than he cultivated about an acre there, and I guess he tried it and tried to raise chufers on it, and turned the hogs out to eat them, and they wouldn't eat them, and throwed up the thing. That's all he done in the way of cultivation.

Q. Now, tell me, as nearly as you can, when you bought this cedar from Mr. Beardall.

A. Well, that is hard for me to do. If I was to tell you I couldn't say that it would be correct. I can tell you about; it was before the big freeze in 1895. It was before the big freeze that we bought it. It was about '90 or '91 or '2; along in there somewhere. It must have been as much as '90.

Q. You say that Wofford lived in a palmetto shack?

A. Yes sir.

Q. And then who is this other one that lived in a palmetto shack too, Boykin?

A. No, he lived in a board house, or built one. I don't know whether he lived ther or not, but he built one.

Q. Do you know of your own knowledge, or are you just supposing it?

A. I saw it. I went there hog hunting one day, and the hogs got away from us, and went through there, one day, and I saw the house.

Q. How big is the house?

A. I should say ten feet, something like that.

Q. How much land was cultivated around that?

A. None.

Q. None?

A. Not while I was there.

Q. How often did Boykin sleep there?

A. I don't know. It was ten o'clock in the day when I was there, and I didn't see anything at all.

365 Q. How long ago was that?

A. That was this last December five years ago, I think.

Q. There was no one that you saw then?

A. No sir, I didn't see anyone, didn't see anything.

Q. Was there any sign of cultivation of the land anywhere else on the tract?

A. No sir, not at that time.

The witness L. J. OWENS then resumed the stand, and further testified as follows:

Direct Examination Continued.

The last question was here read to the witness, as put to him before he left the stand.

A. I believe I stated that they erected a mill. They cut timber, principally on the grant, and sawed it into lumber for their own use and for the market, for sale. The mill was run by the Powells, and others, most of the time up to 1883. They sold some timber off the grant during the time. In 1874 my father and Mr. Ivey Royal bought cypress of them for making hand sawed shingles, which they got off of the east end of the grant. That was about the disposition I remember the Powells making of the timber, any timber.

Q. State whether or not they got pine timber pretty generally over the grant, different portions of the grant?

A. Almost entirely on the grant. They cut it on the grant almost entirely.

Q. All over it?

A. No, they cut their pine timber on the west end of the grant, which would be section nine and sixteen principally.

Q. What is the character of the eastern end of
366 the grant?

A. It is swampy.

Q. A heavy swamp?

A. Part of it is, with hammocks, and some pine glades, and cabbage palmetto, and some cypress.

Q. Did Mr. Slade lumber that grant also during that period?

A. Yes sir.

Q. Where did he lumber from?

A. As well as I remember he cut the principal part of what he cut on what would be section sixteen, which would be the southwest corner of the grant.

Q. The cypress that your father bought with Ivey Royal was taken from the swamp, was it, on the eastern end?

A. Yes, from the swamp on the eastern end, the extreme eastern end, right along the run on Black Water Creek.

Q. What sort of timber was there on the grant, what kinds?

A. Well, it was principally pine and cypress, some cedar and poplar and hickory.

Q. What portion of the grant was the poplar on?

A. Principally along near the southern edge, on the south border of the swamp.

Q. Do you know whether Mr. Slade logged and milled some of that poplar?

A. Yes sir, he did, some for wagon beds: not but very little poplar. He sawed some cedar. I have some cedar lumber now that he sawed.

Q. Where was that taken from?

A. Off the grant.

Q. What part of the grant, the eastern part?

A. He got that from nearer the western edge than the eastern; it was handy to the mill.

Q. The swamp makes up from the center, like, does it?

A. All the way from the western edge to the extreme eastern edge, right straight through.

367 Q. The greater portion of this grant is swampy?

A. The greater portion of it, yes sir.

Q. How do you fix the time that the Powells left there in 1883?

A. Well, I was the last one to run the mill. I worked at the mill in '81 and '2 and '3. I worked with George W. Powell at the mill in the early part of 1881, and in the latter part of '82 and the first part of '83 I was running the mill myself.

Q. You mean you leased the mill?

A. Yes sir.

Q. Who did you lease it from?

A. From Mr. George Powell.

Q. Where did you get the timber?

A. I got it off the grant.

Q. What kind of timber did you cut?

A. Pine nearly altogether, some hickory.

Q. Where did you get the hickory timber from?

A. I got it near the spring, which is near the west end of the grant.

Q. Near the side of the grant?

A. Near the side, near the western edge, and about the center, from north to south.

Q. State whether or not the Powells and those that they sold to used this grant and the lumber that was upon it to sup-

ply the demand? State whether they took it from wherever it happened to be on the grant?

A. Invariably they took it wherever it was handiest. The greater part of the pine lumber I sawed was sunken logs they had put into the mill pond. I raised them.

Q. That you milled?

A. That I milled. Yes sir.

Q. The business of the Powells principally was that they were mill men, were they?

A. Yes sir.

Q. And the principal use they made of this grant was to supply the timber and logs for their mill, whatever they had demand for?

Q. [A.] That was their principal business.

368 Q. Were they ever molested or interfered with in any of that time that they logged and lumbered that grant, by any other persons?

A. Not a particle that I ever knew of.

Q. Who was the generally known and accepted owner, in the neighborhood, of that property during all this time?

To which question complainants object, on the ground that same is incompetent and improper.

A. Parson Powell, George C. Powell.

Q. Who was in the control, occupancy, use and actual possession of this grant during all this time?

To which question complainants object, on the ground that it calls for a conclusion of law.

A. George C. Powell.

Q. During all this time did you ever hear of anyone else claiming to own any portion of it?

A. I never did.

Q. Did he claim and exercise ownership and control over all that property during all this time?

A. Completely, sir, unless it was right at the latter part. Now, George W. Powell—

Q. I mean him and those that claimed under him.

A. Yes.

Q. I understand that all the parties who exercised owner-

ship, control and use of that property were either George C. Powell or those that he permitted or deeded property to?

A. Exactly so.

Q. At this time, 1883, after you gave up the running of the mill, into whose hands did the title of the property pass, to whose control and ownership?

To which question complainant objects, on the ground that a question of title is a question the witness is not competent to determine.

A. Sanford—General Sanford, as he was known.

369 Q. What was the business of General Sanford? What was he understood to be?

A. I understood he was colonizing the town of Sanford at that time.

Q. How far is Sanford from the grant?

A. On an air line I don't think is more than ten miles.

Q. I believe you said in some part of your examination that Mr. Beardall was out on that property and surveyed it?

A. Yes sir. That was after I had quit running the mill.

Q. And about what time was this? State as nearly as you can.

A. It must have been early in the nineties, '91 possibly. I can't state the exact time.

Q. How long did Mr. Sanford control this property and own it?

A. I couldn't say, just.

Q. Give the best of your knowledge of the matter.

A. Well, along early in the '90s I understood that it changed hands and was transferred to the Sanford Colonization Company.

Q. You mean the Florida Land and Colonization Company?

A. Yes.

Q. Who was the agent of that company?

A. Mr. Rand, as far as I ever knew.

Q. Here in Sanford, Mr. Frederic H. Rand?

A. Yes sir.

Q. What use was made of this property during the time that Mr. Sanford had it, up to the time that the Colonization Company got it?

A. I don't think there was any use of it, unless it was that some of the cedar timber was sold to White. I thought that White bought some, or that he got quite a lot off the grant, and I thought it was while the Sanford Company owned it. That was my recollection about it.

370 Q. Do you know in whose interest Beardall was acting when he came out first to survey that land?

A. It seems to me it was Sanford.

Q. Sanford?

A. Yes sir.

Q. He was afterwards with the Colonization Company, was he?

A. Yes sir.

Q. State whether he came out there in their interest afterward, if you know?

A. Did he?

Counsel:

Yes.

A. Yes.

Q. What was Beardall doing there at those times—at that time?

A. He was surveying the first time I ever met him on the grant, he was surveying on the east line of the grant.

Q. Did you see him out there often after that?

A. I can't say that I did see him very often.

Q. Did you see him there several times?

A. Several times, yes sir.

Q. Did there appear to be anybody else looking out for the property other than Beardall during this period?

A. Soon after I met him there he had a man named Thomas, Ed Thomas, in charge of the grant, living on the grant.

Q. Can you place that time when Thomas first went to live on the grant?

A. I can't exactly.

Q. Give the best of your recollection about the matter.

A. It was near 1890; I think it was just before or just after, I couldn't say.

Q. How long was this that you noticed that Thomas was living on the grant, after the first survey by Beardall?

A. He must have lived there three or four years.

Q. No I said, how long after the time that you saw Beardall first out there was it that Thomas went to live on there?

A. Why, not more than a month, I don't think.

371 Q. Right soon afterward?

A. Soon afterward.

Q. How long did Thomas live on there?

A. I think he must have lived there as much as three years, possibly longer.

Q. Where did he live on that grant?

A. He lived directly north of the mill site, about half a mile, which would be in section nine, if the section lines were carried out.

Q. I would like to ask you where during all this time, from '72 to '82, the Powells and those under them obtained their supply of fuel and fence timber and timber for other improvements that they made?

A. On the grant, entirely.

Q. What was Thomas doing on that grant? What were his duties as you observed them, and what did he do?

A. Well the most I knew him to do was to hunt on the grant. He did most all of his hunting on the grant. He was quite a hunter.

Q. State whether or not he was around and about this grant continually, and on various portions of it, and all over it?

A. Yes, he was, to my certain knowledge.

Q. Have you ever hunted with him?

A. I have.

Q. Deer hunting?

A. Yes.

Q. What did Thomas do, so far as having charge of that grant?

A. He had charge of it.

Q. What did he do?

A. Why, he lived on the grant, and his only home was on the grant.

Q. Do you know of his keeping off trespassers, or anything of that kind?

A. There was no trespassing while he was on it that I can call to mind, none that was considered a trespass. I think that while he was on it, the best I can remember, there was

some crossties cut by a party that homesteaded on
372 the west edge of the grant, took up a homestead on the west edge, and this party contended that his homestead reached to the section line, which really took a strip of the grant, and there was some crossties cut there, but Thomas didn't consider that a trespass. It wasn't considered a trespass, but it really was.

Q. Did he stop them from cutting any more?

A. They only cut a part. I suppose that he did, from the fact that they only cut a part of that timber.

Q. And then stopped?

A. Then stopped.

Q. State whether or not it was the general understanding in the community during that period that he was on there that he was in charge and control for the Florida Land and Colonization Company, for the purpose of keeping off trespassers and holding possession of the property?

A. It was universally known that he was doing it.

Q. Everybody around there understood it?

A. Everyone knew it.

Q. I believe you said you lived within a mile and a half of the grant?

A. Yes sir.

Q. Who was on there in that same capacity after Mr. Thomas left?

A. A man by the name of McIntosh, as I remember best.

Q. How long did he stay on there?

A. I couldn't say.

Q. Do you recollect his being there?

A. Oh, yes.

Q. Where did he live?

A. He lived on the south side of the grant, had him a house, built him a house on the south side of the grant.

Q. What became of McIntosh?

A. He is dead.

Q. How long ago did he die?

A. It must have been ten years ago.

373 Q. State whether you have any recollection of a man by the name of Jones ever having been on the property, with Thomas, or about the same time?

A. I think he was on the survey, I think he was on the survey when I first met Mr. Beardall.

Q. You think he was out there at that time?

A. Yes sir, with Thomas and Mr. Beardall. I don't remember ever having seen him on the grant after that.

Q. Who was McIntosh holding this property for and caring for it?

A. He was holding it, as I understood, for the Colonization Company—for Mr. Rand.

Q. That was the understanding in the neighborhood?

To which question complainants object, on the ground that it calls for hearsay evidence, and is improper, immaterial and irrelevant.

A. Yes sir.

Q. Have you seen McIntosh around and about, looking and watching on this grant, during the time he was there?

A. I did.

Q. Did he exercise the same sort of care that Thomas had?

A. Exactly.

Q. The same thing?

A. Yes sir.

Q. You knew him to be there for that purpose?

A. Yes sir.

Q. And that purpose was generally known in the community, was it?

A. Generally, yes sir.

Q. State whether during the time that Thomas and McIntosh were on that property as you have stated, and in the way you have stated, there was any other person or persons claiming against that possession or use or occupancy of the lands?

A. There was not, to my certain knowledge.

374 Q. Who lived on the grant for them after McIntosh?

To which question complainants object, on the ground that it is not shown that the witness has any knowledge as to how or why parties lived on the grant, and further because the question is leading and suggests the answer.

A. I think Charlie Boykin, immediately after Mr. McIntosh.

Q. Whom did he represent, and for whom was he in possession or on that property?

A. He was working for Mr. Rand, as I understood.

Q. For the same company?

A. The same company.

Q. How long did he stay there?

A. I couldn't say, it seems to me a few months, possibly a year or more.

Q. For what purpose was he there?

A. He was in possession, looking after trespassing.

Q. The same as the others?

A. The same as the others had been.

Q. Alonza Royal when he was on the stand, fixed a date of the shipping of some cedar taken from the grant as being at the time you shipped some oranges from the landing, the Wekiva Landing, on the St. Johns River. Do you know when that was? If so, state what year it was.

A. It was 1901 or 1902, I am not quite positive.

Q. Either 1901 or 1902?

A. 1901 or '2.

Q. Are you certain it was 1901 or '2?

A. No, I beg to recall that; it was 1891 or '92. I didn't ship any oranges there after 1895.

Q. Do you know any parties who during that period that the Florida Land and Colonization Company owned or claimed to own this property, and were exercising the ownership as you have stated, took or were permitted to take timber of any description from the grant?

A. I do.

Q. Who were the parties?

A. Well, Ben Anderson and Henry Anderson
375 got both cedar and cabbage boots from the grant.

Q. Who authorized them to do this?

A. Mr. Rand.

Q. Agent of the Florida Land and Colonization Company?

A. Yes, an agent.

Q. Any others?

A. I think Mr. Royal. The Royals got some cedar from the grant.

Q. Alonza Royal.

A. Yes sir, and his brother.

Q. Who permitted them to get that?

A. Mr. Rand.

Q. Any other parties?

A. Not that I recall.

Q. Can you place the time, the year, these parties obtained this timber?

A. The Royals got theirs along in '90 and '91, I think, '91 or '92 possibly.

Q. When did the Andersons get their timber?

A. They were getting it immediately after the Royals, up to '95 or '6, I think.

Q. During the period from '92 or '3 right on up to '95 or '6?

A. I think so as the best I can recollect.

Q. When did they cut the butts, the cabbage butts?

A. I think immediately after they got the cedar, the best I can remember.

Q. Along toward the last of the time of their getting the stuff?

A. Yes.

Q. What year would you say they were cutting those in?

A. Well, '97 and '8, I think.

Q. '97 and '8?

A. I think it was about that, the best I can recollect.

Q. Who followed Charlie Boykin living on that property?

A. John Wofford, I believe, or a Mr. Fig. The best I can remember, though, it was Charlie Boykin.

Q. I asked who followed Charlie Boykin?

A. Why, Mr. Fig or Mr. Wofford.

376 Q. Mr. Fig or John Wofford?

A. Yes sir.

Q. How long was Mr. Wofford in charge of that property and living on the grant?

A. I am not quite sure as to the length of time he was on it, but it must have been from '92 or '3 until '98.

Q. You are talking about Wofford now?

A. Yes, Wofford.

Q. Who was there after Wofford in that same capacity?

A. I think Wofford was there even longer than that: I think Wofford was on it at the time the Wilson Cypress Company bought it, had been on it from the time he first went on it, whatever date that was, up to the time the Wilson Cypress Company bought it.

Q. State whether or not Wofford was there when Slade moved from that community, if you recollect when that was?

A. Yes, he was.

Q. What was Wofford doing there? What was he on there for?

A. He was on there looking after the grant for the same company—for Mr. Rand.

Q. And what was Boykin on there for?

A. He was there for the same purpose.

Q. You mentioned a Mr. Fig who was there?

A. I can't just remember what time Mr. Fig was there.

Q. What was Mr. Fig there for?

A. He was there for Mr. Rand.

Q. For what purpose.

A. To look after trespassers.

Q. In whose interest?

A. In the interest of the Colonization Company.

Q. Where did Wofford live on the grant?

A. Well, he lived at three different points on it. He had him a farm, and lived on the north center of it, you might say, at first, had a garden there. Later he lived on the south side, near the center, and lastly he lived on the extreme east, at the Double Bridges.

Q. Near the public road?

377 A. Right side of the public road.

Q. State whether you have seen him at different times on different portions of this grant?

A. I have.

Q. What sort of possession was he exercising of this grant property?

A. The same as Thomas, and those after him. Thomas and Boykin and McIntosh.

Q. You say he carried on a farm or garden?

A. Yes, at two points. He undertook to farm some on the east portion of the grant, had some sugar cane near the swamp, about half a mile from his camp, and he started clearing up the yard around his camp at the Double Bridge. I don't remember that he ever raised anything right at the camp. I don't think he did.

Q. What was the nature of the habitation he had there at the north side of the center?

A. Why, it was only a palmetto camp.

Q. He slept there?

A. Yes.

Q. And prepared his meals?

A. Yes.

Q. And carried on the farming?

A. Yes, and gardening.

Q. What was the nature of the place on the south side?

A. He only had a camp there, he didn't clear up any land on the south side.

Q. Simply a sleeping place?

A. Yes.

Q. You know of his sleeping there?

A. Yes, and at that time he didn't entirely desert his north camp, he was at the north camp some and part of the time at the other.

Q. What was the nature of his habitation out on the eastern end there, by the public road?

A. Well, there was an improvement on his other two buildings, while it was only a palmetto shelter walled in, at first. Later on he used some lumber. It was only a comfortable camp, after all.

378 Q. State whether during all the time that Figg and Wofford and Boykin occupied this grant there was any other person or persons occupying the same, or using any portion of the same, against or adverse to these?

A. Not that I ever knew of. I don't think there was. I never knew or heard of it if there was.

Q. They seemed unmolested and entirely in charge of the whole grant?

A. Entirely, sir.

Q. And that was generally understood in the community?

A. Yes.

Q. That they were all there for the Florida Land and Colonization Company?

A. Yes sir.

Q. Do you recollect when the Florida Land and Colonization Company conveyed this property to the Wilson Cypress Company, or about the time?

A. About 1900, as well as I remember.

Q. What portion of the year?

A. In the early part of the year, before the middle.

Q. I believe you said Mr. Wofford was in charge for the

Florida Land and Colonization Company at the time the transfer was made to the Wilson Cypress Company, did you not?

A. I did.

Q. How long did Mr. Wofford stay there after that and who was he staying for?

A. Why, he stayed there several months after the Wilson Cypress Company bought it, for the Wilson Cypress Company.

Q. If you know, under pay from them?

A. Yes, I employed him for the Wilson Cypress Company, to continue there.

Q. What had you to do as to this property for the Wilson Cypress Company at that time?

A. Why, I had to look over it after they bought it, in fact I have ever since, up to the present time, the general superintendence of it.

379 Q. What did you have Mr. Wofford doing for the Wilson Cypress Company?

A. Preventing any trespassing, trespassing of any kind.

Q. Was Mr. Wofford, while he was there, continually around and about overseeing and watching this property?

A. Yes sir.

Q. For that purpose?

A. For that purpose.

Q. State whether or not he reported to you.

A. He reported no trespassing to me.

Q. State whether or not he was acting under you.

A. Yes, he was acting under me.

Q. State whether or not just about the time the deed was made from the Colonization Company to the Wilson Cypress Company any of that company or the officers of that company came out and took possession of that property and put you in charge?

A. Well, Henry S. Wilson was on the property with me.

Q. Did he place you in charge there?

A. Yes sir.

Q. When was that?

A. That was in the spring of 1900, the best I can remember.

Q. Have these parties, the Wilson Cypress Company or their representatives, been upon this land since?

A. Yes, they have.

Q. When was that?

A. The treasurer and assistant treasurer, Mr. Rust, and Mr. Hurb. Wilson were on it with me about three years ago, I think it was, this spring.

Q. What has the Wilson Cypress Company done upon this property since that, since they received their deed from the Florida Land and Colonization Company, in the way of controlling it?

A. They have had exclusive control.

Q. Nobody else had any possession or use or occupancy of the land against them?

A. Not that I know of.

380 Q. Have you watched it constantly all the time?

A. I have.

Q. What have you had to do with it and what have you done in the matter of keeping off trespassers or notifying parties, or holding possession for them yourself?

A. Why, part of the time I have had nobody on it except myself. About four years ago I got Mr. Boykin to take charge of it.

Q. When he had it what did you do toward going over this property and watching and meeting that no trespassing was done?

A. I was continually, constantly, going over it from different points.

Q. Afoot or horseback?

A. Both.

Q. State whether you have prevented trespassing on this property?

A. I never had any trouble with trespassers. In making a survey, a careful survey on the south line, near the southwest corner of it, after the company got it, soon after Mr. Wofford went off of it, (he only stayed on there a few months after the Wilson Cypress Company got it), I discovered that Mr. Overstreet had boxed some timber while Mr. Wofford was on it. Wofford hadn't realized that he had boxed over the line, but I discovered that he had boxed across the grant line to the section line on the south line of section sixteen, which I called Mr. Overstreet's attention to. He at first thought he had a right to do it, though his deed was to the section line, but when he come to look it over he admitted that he had made a mistake.

Q. He relinquished his occupancy of that?

A. Yes, and he has paid or settled the claim.

Q. With the company.

A. With the Wilson Cypress Company. That was all the trespassing I had to contend with.

Q. State, if you know, whether these grant lines are defined, the outside grant lines?

381 A. Quite clearly.

Q. It was a claim, then, by Mr. Overstreet, that he owned up to the section line?

A. Yes sir, he was honest in it, I always thought.

Q. As a matter of fact that line that he cleared up to, and afterward relinquished, was inside the grant line?

A. Yes sir.

Q. How far inside?

A. About a hundred yards, I think. In some places it is seventy yards, in some places practically a hundred.

Q. There is that condition all the way around the grant, isn't there?

A. Entirely, all the way around.

Q. It varies from seventy to a hundred yards?

A. Yes sir, something like that.

Q. The section lines that would have been section lines if they were prolonged, inside the grant, they don't come up to the outside grant lines, do they, in any case.

A. The section lines?

Q. If those section lines were prolonged inside of the grant those section lines wouldn't come up to the grant lines, would they?

A. They do not.

Q. They vary that same distance?

A. I suppose so. The section lines of eight sections form the grant, but the section lines are all inside the grant lines.

Q. Now who have you had on this property since you gave up the actual supervision of it yourself, that is, to actually look after and care for it?

A. Mr. Boykin, John Boykin—J. W. Boykin.

Q. How long has he been on there?

A. About four years, as I remember.

Q. What does he do in reference to having charge of this property?

A. He has the same duties and the same authority that

all the rest of the parties living on it had, as agent, to prevent trespassing and keeping possession.

382 Q. He has been in actual charge and supervision and looking after this property all this time?

A. Yes sir.

Q. What does he do? What is the nature of his acts in doing that?

A. Well, he has a little cabin built on the south side of the grant.

Q. State whether or not he stays there part of the time?

A. He does.

Q. Does he go over the grant looking around it?

A. He does: he is continually looking after the property.

Q. Do you know whether he has stayed there in his cabin himself any part of the time?

A. Why, I have been there with him a number of times, and know that he does. And I supposed that he stayed there a part of the time, otherwise.

Q. He is hired to do that, is he?

A. Yes sir.

Q. State whether Mr. Wofford, (and yourself at the time you did this work), and old J. W. Boykin have been paid compensation regularly for doing this work, by the Wilson Cypress Company?

A. Regularly, yes sir.

Q. And employed for that purpose?

A. Yes sir.

Q. Who is now employed for that purpose?

A. Mr. Boykin.

Q. He is still in possession and care of this property?

To which question complainants object, on the ground that same asks for a conclusion of law, and is improper and incompetent.

A. Yes sir.

Q. What acts in reference to the posting of these lands have been done since the Wilson Cypress Company took possession of them?

A. Before Mr. Boykin went on I posted a number of notices around, quite a number of them, forbidding trespassing.

Q. What sort of posters did you use? What did
383 they contain?

A. Forbidding trespassing of any kind on the property.

Q. In whose name?

A. The Wilson Cypress Company's.

Q. The name of the Wilson Cypress Company was on all of these notices?

A. Yes.

Q. Where did you post them?

A. At different places on the grant, on every road and near the outer lines.

Q. And on the corners?

A. Yes sir, near the corners.

Q. How did you post these? What did you do?

A. I tacked them on trees.

Q. Right on the lines?

A. Right near the lines, or I tried to, and sometimes in other places. And at times Mr. Boykin went on and put up quite a number of notices. I left quite a number of notices with him, and he wrote some himself. And later the company had some printed ones, on cardboard, and I furnished Mr. Boykin a supply of these.

Q. Were those notices generally in and about and on and around this grant, posted on all places where they were likely to be noticed?

A. Invariably.

Q. For instance, at the two bridges, where the main road enters the grant on the eastern side, are there notices there?

A. Yes sir.

Q. How many of them?

A. Why, there are as many as two, have been as many as two or three all the while. That is, we try to keep them there. Occasionally the wind might blow one off, and somebody might pass and pull one off.

Q. Have you kept notices there continually?

A. Continually on the public road across the southeastern corner of the grant.

Q. How many notices are there posted up on this property now?

384 A. I can't say, several dozen.

Q. Are they pretty generally over the grant, all portions of the grant, now?

A. On the outer edges.

Q. And along the roads?

A. Yes sir.

Q. About two years ago who was in possession of that property for the Wilson Cypress Company?

A. Mr. Boykin, J. W. Boykin.

Q. And has been ever since?

A. Ever since.

Q. He has been there, you say, continuously, for about four years?

A. I think it has been about four years.

Q. You are certain it is more than three?

A. Yes, I am certain for more than three.

Q. Did the Wilson Cypress Company build any buildings on this property since they owned it?

A. No.

Q. How about the cabin that is there?

A. Well, you said buildings. Mr. Wofford and Mr. Boykin built their own cabins, which was built on the Wilson Cypress Company's time.

Q. They were directed by the Wilson Cypress Company to build them?

A. They were.

Q. State whether during the time that Wofford was there for the few months you mentioned, and the term by yourself, and the time J. W. Boykin was there, anybody has interfered with the possession you were holding of this property in any manner?

A. I have been advised by Mr. Boykin of an attempt or two to make it appear that there were parties trying to get possession of it, or take possession of it.

Complainants move to strike the foregoing answer on the ground that it is hearsay.

Q. Of your own knowledge has there been anybody else on that property and interfering with that control?

A. There has not.

385 Q. Nobody has taken active possession of that property during this period except yourself?

A. Not to my knowledge, they have not taken possession, no sir.

Q. Nobody has taken possession?

A. No sir.

Q. Who is in control and occupying and using that property for their ordinary uses at this time?

A. The Wilson Cypress Company.

Q. Who is in possession, then, at this time?

A. J. W. Boykin.

Q. For whom?

A. For the Wilson Cypress Company.

Q. What is the business of the Wilson Cypress Company?

A. Their general business is logging cypress timber.

Q. Milling?

A. Milling business.

Q. Have they logged and lumbered any property in this locality, to your knowledge?

A. Only some right recently, on the Wekiva.

Q. On other property?

A. On other property. They haven't logged any on this.

Q. They have just recently come into this territory?

A. Yes, recently.

Q. In the last few months.

A. In the last six months, about.

Q. State whether or not there are bodies of cypress timber on this property?

A. There are.

Q. On what part of the grant is this cypress timber?

A. From the eastern part extending westward, and some extending to near the north center.

Q. What is your employment, Mr. Owens, what is your business, now?

A. Surveying principally.

Q. Looking up timbered lands?

A. Yes sir, locating and surveying.

Q. For whom?

A. For the Wilson Cypress Company.

Q. You are connected with them and employed by them?

A. I am in their employ, yes sir.

386 Q. State whether as a matter of fact you know especially during the last five years that the prices

and value of cypress timber has largely increased in value, and land having cypress timber upon it increased in value.

A. Yes, it has.

At this point this hearing was continued to the following day, Tuesday, April 13th, the cross-examination of the above named witness being deferred.

And at nine o'clock A. M. Tuesday, April 13th, 1909, the taking of said testimony was resumed, as follows (the same person being present):

One JOHN W. WOFFORD was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination by Mr. Haskell.

Q. State your name, age and residence.

A. J. W. Wofford (John Wofford). My age is about thirty-six years, and residence Cacia.

Q. How long have you lived at Cacia?

A. About twenty-five years, as well as I remember.

Q. Do you know the property known as the Teresa Rodriguez grant, and designated on the United States surveys as Section 37, Township 19, south of Range 28 east, and Section 41, Township 19, south of Range 29 east, sometime called the Powell grant, a tract of about five thousand acres of land?

A. Yes sir, I know that.

Q. You know the property?

A. Yes sir.

Q. How long have you known this property?

A. About twenty years.

387 Q. Do you know the recognized lines and boundaries of this property?

A. Yes sir, all except the north.

Q. All except what?

A. The north line, and I know just about where that is.

Q. Who first used and occupied this land, to your knowledge?

A. Well, I only know by what others have told me, Powell, so I understood.

Q. (Interrupting) Who was the first one that you knew on the land?

A. The Florida Land and Colonization Company was the first that I knew that was claiming it.

Q. Who was actually on the property then, if anyone?

A. Mr. Thomas, I believe.

Q. What was his given name?

A. Ed.

Q. Have you ever been in the employment of the Florida Land and Colonization Company?

A. Yes sir.

Q. In what capacity?

A. To live on that grant and forbid all trespassing, and to keep possession of it.

Q. Who placed you on there?

A. Mr. Rand, of the Florida Land and Colonization Company.

Q. Of the Florida Land and Colonization Company?

A. Yes sir.

Q. Can you tell about when you first went on there?

A. Not the exact day, but it was in '94, I think.

Q. You think it was in 1894?

A. Yes sir, 1894.

Q. How long did you stay there?

A. About four years, I think.

Q. About four years?

A. Yes sir.

Q. Was anybody on there, during the time from the time you first went there until the Wilson Cypress Company bought this land?

A. No sir.

388 Q. You were there on it all the time, in charge of it, from the time you first went on until after the Wilson Cypress Company bought it?

A. I was in charge of it all the time, and lived there most all the time.

Q. You lived there most all the time?

A. Yes sir.

Q. That was your home?

A. Yes sir.

Q. You had no other place of residence?

A. No sir, no other place.

Q. You slept there, continuously, or regularly?

A. Yes sir.

Q. How long after the Wilson Cypress Company bought this property did you continue on here in that summer?

A. I don't remember exactly. It was some months, I think.

Q. Several months?

A. Yes sir.

Q. All of this time that you were on there you received compensation for your services in holding that possession?

A. Yes sir, as well as I remember.

Q. They don't owe you anything for it now?

A. No sir.

Q. You were hired to stay there at so much a month, was that it?

A. Yes sir, so much a month.

Q. Now what did you used to do? What were the acts that you performed, the services that you performed in and about that grant?

A. Well, I gardened some, was clearing some land for gardening and farming and hunting some, and worked on it some.

Q. How much of the time were you around and about, watching and going about this grant?

A. Well, I was there most all of the time, but I was working there most of the time, and I wasn't away but very little, only at certain times.

Q. Did you guard and watch and go about over this grant?

A. Yes sir.

389 Q. All the different portions of it?

A. Yes sir.

Q. That was your work, was it, going around and about over it?

A. Yes sir, that was my work, that was what I was employed to do.

Q. Where was your house, the first one that you stayed in?

A. About the center, somewhere near the north line, on a line with the center.

Q. You know you were inside the grant all the time?

A. Yes sir, I know that I was inside all the time.

Q. Did you have any other place on the grant beside that?

A. Yes sir, I had others.

Q. At this particular place, how much land did you cultivate there?

A. About an acre, maybe a little more.

Q. An acre or more?

A. Yes sir.

Q. Where were your other places situated?

A. One was at the Double Bridges, near the southeast corner.

Q. A public road passed by there?

A. Yes sir.

Q. What sort of a house was this there?

A. It was a house built of cabbage logs and rough lumber, and covered with palmetto fans.

Q. Did you cultivate any portion of the land there?

A. A little, only as an experiment, a trial.

Q. What did you plant there?

A. Some Irish potatoes, and cane, pumpkins and other things.

Q. Did you have any live stock there?

A. Yes sir.

Q. What did you have?

A. Hogs.

Q. Did you own hogs all the time you were on there?

A. No sir.

Q. Did you own any other live stock?

A. No sir.

Q. You owned hogs part of the time?

A. Part of the time, yes sir.

390 Q. During what period did you have these hogs?

A. I don't remember exactly.

Q. Where did you get them?

A. From Mr. Slade.

Q. Were you on that grant when Mr. Slade moved away from that neighborhood.

A. Yes sir.

Q. You got the hogs of him then?

A. Yes sir.

Q. Were those hogs kept on the grant?

A. Not entirely, no sir.

Q. You turned them loose on there?

A. I turned them loose.
Q. Were they part of the time on this property?
A. Yes sir, most of the time, I think.
Q. Did you have another place on there?
A. Yes sir, I had another.
Q. Where was that situated?
A. It was still further south of the north line.
Q. About how far from the other place?
A. Nearly a half a mile.
Q. About half a mile from the other?
A. Yes sir.
Q. What sort of a place was that?
A. That was a large palmetto camp, cabbage palmetto camp.
Q. A large cabbage palmetto camp?
A. Yes sir.
Q. What was there?
A. I had a small clearing started there.
Q. Did you plant anything there?
A. No sir.
Q. Did you see people coming along the roads time and again across that property? There at the Double Bridges?
A. I did, yes sir.
Q. At the Double Bridges?
A. Yes sir.
Q. Did you allow any trespassing on that property while you were there?
A. No sir. There was a few turpentine boxes cut at one time.
Q. By mistake, or something of that kind?
A. By mistake, yes sir.
Q. Who did that?
391 A. Overstreet?
Q. A man named Overstreet?
A. Yes sir.
Q. Did you stop that? Was that stopped?
A. I am not sure whether they did. Mr. Overstreet spoke to me about it at one time. I seen his woodsman in the woods and mentioned it to him, was there when they were boxing timber along the line and told him I would rather he would stop, and not go over.
Q. Not go over a certain place?

A. Yes sir.

Q. Was it soon after this, or about this time, that you quit working for the Wilson Cypress Company, about the time of the cutting of those boxes?

A. It was later, I don't know just how long.

Q. You quit a little later?

A. Yes sir.

Q. I was just trying to fix the time. It was towards the last of your stay there for them, was it?

A. Yes sir, toward the last of it.

Q. While you were there for the Colonization Company was there any lumbering of the timber on that grant?

A. Some cedar, when I first went there.

Q. Who got this cedar?

A. Henry and Ben Anderson.

Q. Colored people, were they?

A. Yes sir.

Q. What were your instructions about them getting that timber?

A. Well, I was told that they were already getting that, I believe, when I went there.

Q. When you went there?

A. Yes sir, I didn't have any about that.

Q. You were told that it was all right by the folks that hired you?

A. Yes sir, I was told that it was all right.

Q. To allow them to cut the timber?

A. Yes sir.

Q. Those were your instructions from Mr. Rand?

392 A. I didn't have any instructions in regard to that from Mr. Rand. They were already cutting that cedar when I went there.

Q. You understood that it was all right?

A. Yes sir, I understood that it was all right. I didn't have any instructions about that.

Q. You never stopped them?

A. No sir.

Q. Did anybody else try to cut any timber there when you were there?

A. No sir.

Q. Everybody in the neighborhood knew you were there protecting it, did they?

A. Yes sir.

Q. All the time that you were there living on that grant was there anybody else who had any occupancy or control over that property except you and those that employed you?

A. No sir.

Q. Nobody else ever made any attempt to take possession of that property?

A. No sir.

Q. Were you continually around and about that property all this time?

A. Yes sir.

Q. On all its lines, and through the swamp?

A. Yes sir.

Q. Do you remember testifying and giving testimony in a proceeding before Mr. L. A. Field and R. F. Kreigsman, commissioners, some eight or nine years ago?

A. Yes sir.

Q. Was the testimony that you gave on that occasion true?

A. Yes.

Q. And the facts you stated?

A. Yes sir.

Cross-Examination.

By Mr. Dewhurst:

Q. Where were you living prior to 1894? Where were you living before 1894? Whereabouts did you live?

A. Cacia.

Q. How much of a settlement is Cacia?

A. About twenty families, I suppose, or was then.

393 Q. Over how large a territory are those twenty families scattered?

A. About four miles square, I suppose.

Q. How far is Cacia from the Rodriguez grant?

A. About a mile and a half.

Q. Is there a postoffice at Cacia?

A. Yes sir.

Q. Who lived between that and the Rodriguez grant?

A. My father and Ben Anderson—

Q. A negro?

A. Yes sir—and I don't know—I may live there myself, but I am not sure.

Q. What?

A. I may live there myself, but I am not sure of that.

Q. You may live there? You are not sure?

A. Yes.

Q. Is the character of the lands around this grant unsettled and wild?

A. Yes sir.

Q. On the north line of the grant, how many people live within a mile of the north line of the grant?

A. I don't think there are any.

Q. How many people live within a mile of the east side of the grant?

A. Not any.

Q. How many people live within a mile of the west side of the grant?

A. I don't think of any.

Q. How many people live within a mile of the south side of the grant, outside of the turpentine operators?

A. I don't think there are any.

Q. Are you quite sure that you stayed there four years?

A. I am not quite sure of the time.

Q. How much short of four years do you think it was?

A. I can't remember that.

Q. You can't remember that?

394 A. No sir.

Q. Was it more than four years or less than four years?

A. It was less than four years, I think.

Q. You say you slept in these various camps. Now, did you have any regular days for sleeping at any particular camp?

A. No sir.

Q. How many times a week did you sleep in the camp at the Double Bridges?

A. I was there most all the time, and that was my principal home.

Q. That was the principal place?

A. Yes sir.

Q. How many times a week did you sleep in the place on the north side of the grant?

A. Well, at times I worked there, and sometimes it would be a month or longer that I wouldn't be there.

Q. It was sometimes two months that you wouldn't sleep there, was it not?

A. I think so, yes sir.

Q. How many months would pass that you didn't sleep in the camp at the south of the tract?

A. Well, I was there only when I was working there.

Q. That was but a little palmetto shack?

A. Yes sir, a little palmetto shack.

Q. Where did you cook your meals?

A. Wherever I happened to be camping and working.

Q. What work did you do?

A. Clearing some land, and some gardening and cutting boots.

Q. Cutting what?

A. Boots.

Q. Palmetto boots?

A. Palmetto boots, yes sir.

Q. Did you know any part of the tract called the Doctor Pendleton place?

A. Yes sir.

Q. Who was on that while you lived on the grant?

A. No one.

395 Q. That was unoccupied?

A. Yes sir.

Q. Well, then, except the shacks that you had on this grant it was equally unoccupied as the Smith & Clifford place, or Pendleton place, wasn't it? One was as much occupied as the other?

A. It was unoccupied by anyone.

Q. You say that Overstreet cut some boxes on the pine trees within the grant?

A. Yes sir.

Q. Did Overstreet claim any right to that land under the Rodriguez people? Did he claim that the Rodriguez people gave him any right to cut it?

A. I don't know.

Q. Wasn't Overstreet turpentining the United States lands south of that, that is, lands which had been public lands?

A. He told me, the woodsman did, that he bought eighty acres there.

Q. In what direction from the grant?

A. That was south, and near the southwest.

Q. But he didn't claim that he had bought any land in the grant?

A. No sir.

Q. And when he turpentined the land over the grant line he turpentined it under the claim of the eighty acres that he had bought, did he?

A. No sir.

Q. He said he bought eighty acres south of the grant? He told you he bought eighty acres south of the grant, did he?

A. That was the woodsman. That was when they were turpentining on the south line.

Q. Then he told you that he bought eighty acres south of it?

A. Yes sir. Overstreet didn't tell me, his woodsman did. That was when I was there at that place.

Q. Do you know under what claim he turpentined the lands in the grant?

A. No sir.

Q. What did you tell him when he did that?

396 A. I never told him anything.

Q. You didn't tell him anything?

A. No sir.

Mr. Haskell:

Ask him what he told the woodsman.

Q. What did you tell the woodsman?

A. That I would rather he wouldn't cross or go over a certain line, and he said he wouldn't.

Q. You asked him not to cross over a certain line, and he said he wouldn't?

A. Yes sir.

Q. How long did Anderson cut cedar on the grant after you went there?

A. I don't know just how long.

Q. Well, give me some idea, the best you can.

A. I don't know, I was there several times where it was, but I didn't see him.

Q. You didn't see him cutting at all?

A. No sir, I knew it was him, though, that was cutting. He told me so.

Q. You knew because he told you he was cutting there?

A. Yes sir.

Q. But you didn't see it all the time?

A. I seen the cedar, I didn't see him.

Q. You didn't see him?

A. No sir?

Q. Now, how long after you went there did you see any cedar cut, fresh cut?

A. I don't remember, several months, though.

Q. Some months after?

A. Yes sir.

Q. According to your best judgment, did he continue to cut more than a few months after you went there?

A. I don't know exactly, I think not, though.

Q. You don't think he did?

A. No sir.

Q. You say that you were on the place for about four years?

A. Yes sir.

Q. Did you see any notices put up there in regard to anybody claiming that land during that time?

397 A. No sir.

Q. It is in testimony in this case that a Mr. Martin, an attorney from Washington who represented the heirs of Teresa Rodriguez, came down on that land and posted notices in regard to the claim of the Teresa Rodriguez people to that land. Did you ever see any of these notices?

A. No sir.

Q. Did you ever see Mr. Martin on the land?

A. No sir.

Q. Did you ever see any of the persons that claimed that they represented the Rodriguez people, upon it?

A. No sir.

Q. Who gave you to understand that Anderson, the negro, was allowed to cut cedar upon this land?

A. I don't remember exactly—I think it was—it might have been Mr. Owens.

Q. You have testified that everybody in the neighborhood knew you were there to look after the land. How do you know what the people in the neighborhood knew about that?

A. I didn't understand that question.

Q. You testified that everybody in the neighborhood knew

you were there to look after that land. How do you know what the people in the neighborhood knew?

A. I didn't quite catch the question.

Q. Counsel on the other side here asked you the question if everybody in the neighborhood knew that you were there to look after the land, and you answered yes. Now, then, how do you know what the people in the neighborhood knew about your being there?

A. They knew I was there.

Q. They knew you were there?

A. Yes sir.

Q. They could see you there, couldn't they?

A. Yes sir, they could see me, they knew I was there.

Q. How did they know what purpose you were there for?

A. Well, I told some of them, and they knew it.

398 Q. How did they know it?

A. Well, I told some of them.

Q. You told some of them what you were there for?

A. Yes sir.

Q. Those that you told what you were there for, what did you tell them?

A. Well, I don't remember what it was.

Q. Well tell me as nearly as you can what you told them.

A. Well, I couldn't remember just what I did tell them.

Q. Did you tell them how much pay you were getting?

A. Yes sir.

Q. How much were you getting?

A. Five dollars per month.

Q. Five dollars per month?

A. Yes sir.

Q. Did you give all your time to your employers for that five dollars a month?

A. All that I could, yes sir, most all.

Q. Did you tell the neighbors that you were getting five dollars a month?

A. Yes sir, they knew, some of them.

Q. During the time that you were living on this place, outside of what Anderson cut there, there were no other persons cut any timber there? You think there was no other wood or timber cut on the land, was there?

A. Only cabbage boots.

Q. Cabbage boots?

A. Yes sir.

Q. And you cut some?

A. Yes sir, I cut some.

Q. How many cabbage boots did you cut?

A. I don't know, several thousand—a great many thousand.

Q. Did you ever cut any cabbage boots elsewhere, on any other tract of land at all?

To which question defendant objects on the ground that same is immaterial and irrelevant.

Q. [A.] Yes sir.

Q. Did you ever cut any cabbage boots on any other tract of land in your life?

A. Yes sir, afterwards, after cutting on the grant,
399 I cut on other tracts.

Q. On other tracts?

A. Yes sir, a few.

Q. Is it the general custom in the country to cut them wherever the people find them?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

(Question read to witness at request of counsel.)

Mr. Cooper:

Don't you have to get permission, he means.

A. They got permission.

Q. The people get permission always when they cut them?

A. I don't know whether they always do or not.

Q. It isn't usual for people to cut them wherever they find the cabbage trees growing in the swamps and glades, without getting permission?

A. No sir, I think not.

Q. Do they cut them on the public lands, the United States lands?

A. Not that I know of.

Q. Then in your neighborhood people have been very care-

ful not to cut cabbage boots on any lands without permission?

A. Well, I don't know about their affairs, their private affairs, I was only working for them.

Q. Did you have any team?

A. No sir.

Q. Then whatever cabbage boots you cut, did you transport them without any team?

A. No sir, I was cutting by the piece, for others.

Counsel:

I don't hear.

A. I was cutting them by the piece for other people.

Q. How were they transported?

A. By wagons, teams.

Q. Did you get the pay for them yourself?

A. For only what I cut.

Q. What?

A. For only the amount I cut of them.

400 Q. You got paid for what you cut?

A. Yes sir.

Q. And did you keep that money yourself?

A. Yes sir and used it.

Q. You kept it and used it?

A. Yes sir.

Q. You didn't have to turn it over to anybody?

A. No sir.

Q. You didn't turn it over to the Rodriguez people?

A. No sir.

Q. You didn't turn it over to the Wilson people?

A. No sir.

Q. You kept it and used it for yourself?

A. Yes sir.

Further Cross-Examination.

By Mr. Jones:

Q. Where was that land you said you cleared up?

A. That was near the southeast corner.

Q. Near the public road there?

A. Yes sir, about three hundred yards from the public road.

Q. To the right of the road or left of the road?

A. To the left of the road, going.

Q. Going where?

A. To Cacia.

Q. What section was that on?

A. I do not know.

Q. Wasn't the section corners marked there?

A. I don't know of any marks only the corners, the corners are all I know of.

Q. Did you see the section corners marked through that grant?

A. Not the lines, but I know the corners, the corners of the grant.

Q. Wasn't the section corners marked inside the grant there?

A. Not that I know of. They may be.

Q. Do you mean to say, Mr. Wofford, that you haven't seen any section corners marked inside that grant?

A. Well, I don't know much about the lines and sections.

Q. You don't know much about the lines and sections?

A. I know the lines on the east and west and south sides of the grant, but about the other lines I don't know.

401 Q. There are a number of section corners as you go around inside the grant, are there not? There are a lot of section corners in there?

A. I couldn't tell you, sir.

Q. There are section posts stuck up all through there where those section corners are?

A. I don't know about that, sir.

Q. You don't know about that?

A. No sir.

Q. Do you know where section ten is in that grant?

A. No sir.

Q. Do you know where section nine is?

A. No sir.

Q. Do you know where section twenty-one is?

A. No sir.

Q. Do you know where section thirteen is?

A. No sir, not any of them.

Q. You don't know any of the sections?

A. No sir.

Q. And you don't remember of seeing section corners inside the grant marking different sections?

A. Not inside, no sir.

Further Cross-Examination.

By Mr. Dewhurst:

Q. Mr. Wofford, how much of an inclosure was there at this ten-acre tract that you say you cleared?

A. That wasn't inclosed. I hadn't it completed.

Q. It wasn't inclosed at all?

A. No sir.

Q. And how much of an inclosure did you have at either of the other shacks.

A. I only had an acre or more at the one on the north.

Q. And none on the south?

A. None on the south.

Q. And how much of a fence was there in this inclosure of an acre or more, enough to keep hogs out?

A. Yes sir.

Q. And that is still standing?

A. No sir, it is all gone, most of it.

402 Q. How long was it kept up?

A. About three years, I think.

Re-Direct Examination.

By Mr. Haskell.

Q. Where did you get these boots from on the grant, what parts?

A. On the east and south.

Q. These palmetto boots are in the swamp lands, aren't they?

A. Yes sir.

Q. You cut them generally all over the swamp? Is that the idea?

A. Yes, sir; wherever they were on the land, on the grant.

Q. You took them promiscuously wherever you found them, all over the grant?

A. Yes sir.

Q. You say you used that money. Was that the under-

standing, that you should do that, for the care of the property?

A. Yes sir, that was the understanding.

Q. That was your employment, was it?

A. That was my employment.

Q. What did you use that money for?

A. For various things, mostly for living, and clothing, and some farm implements.

Q. That, in addition to the wages you received, was your compensation?

A. Yes sir.

Mr. Dewhurst:

I object to that, sir, it is leading and improper.

Q. State fully what your compensation was.

A. Five dollars per month was the wages I was paid by the Florida Land and Colonization Company, and the other work I did I was paid for by private persons, just for the labor.

Q. For the labor of getting out these things.

A. Yes sir.

Q. By whose permission did you cut these palmetto boots from the grant?

A. By Mr. Rand's.

Q. The Colonization Company?

A. Yes sir, the Colonization Company.

403 Re-Cross Examination.

By Mr. Dewhurst:

Q. Now, what was the date when you cut those palmettos?

A. I couldn't give you the date, I don't remember.

Q. Do you think it was in 1894?

A. I think it was later.

Q. You think it was a little later?

A. Yes sir.

Q. But you can't say?

A. No sir.

Q. What was the bargain or arrangement made between you and Mr. Rand when you went on the place? Just state, now, to the best of your recollection, what he told you, and what you agreed with him.

A. I had a letter from him when I went there, that I was to stay there, live there and take charge of it.

Q. He sent you a letter telling you to do that?

A. Yes sir.

Q. And what did he agree to pay you?

A. Five dollars per month.

Q. And what else did he agree to do?

A. That was all.

Further Cross-Examination.

By Mr. Jones:

Q. Mr. Wofford, you say your last place was down there at the Double Bridges, wasn't it?

A. The last place?

Counsel:

Yes.

A. Yes, that was where I lived last there.

Q. And you went there at the time you were cutting boots?

A. Yes, that was afterwards. I lived there up to the last, until I come off and left.

Q. How far east of the Double Bridges did you cut boots, half a mile?

A. Yes sir.

Q. Did you cut as much as a mile east from there?

A. No sir.

Q. Or three-quarters?

A. East?

Q. Yes, right out towards Black Water, there, didn't you cut some boots out there about three-quarters of a mile off this grant, east of the Double Bridges, there?

404 A. There was a few cut out there, yes sir.

Q. You cut a few?

A. I didn't cut many of them myself.

Q. Who cut them?

A. The same parties that were cutting on the grant.

Q. Who were those?

A. Henry Anderson.

Q. What time was that?

A. I don't remember the time.

Q. Was anybody else cutting there?

A. No sir, not at that time, there was other people cutting for wages, I don't remember how many.

Q. How many people were cutting there?

A. I don't remember how many.

Q. State as near as you can get at it.

Mr. Cooper:

This is on the grant he is talking about now.

A. There was as many as ten at one time, I think, or there may have been more. At other times there was less.

Q. All cutting boots in there?

A. Yes sir.

Q. What were the names of some of them?

A. Henry Anderson and Lonnie Baker, and my brother was one, and Ben Anderson, Jim Rouse, and some darkies, I don't know their names.

Q. Was that part of your compensation, that they should cut these boots on the grant?

A. No sir.

Re-Direct Examination.

By Mr. Haskell:

Q. Who did the Andersons have permission from?

Mr. Dewhurst:

From your own knowledge, now.

Q. From your understanding of it.

A. They told me, from Mr. Rand, of the Florida Land and Colonization Company.

Mr. Dewhurst:

We object to that testimony, as hearsay.

405 Q. These other people were with the Andersons?

To which question complainant objects, on the ground that same is immaterial and irrelevant and calls for hearsay testimony.

A. Yes, working for the Andersons.

Q. You have been testifying about this cutting of palmetto boots? Do you refer to the cutting that was done on the grant? What have you been testifying to now?

A. Yes sir, most all of it.

Q. Do I understand you to say that there were a few boots cut outside the grant by these other parties?

A. Yes sir.

Q. That is what you mean by your testimony?

A. Yes sir.

Q. How do you know that these other parties were cutting the boots on the land on the grant for the Andersons?

A. I was there with them, and cut, myself.

Q. You know it is so, do you?

A. Yes sir.

Q. Did anybody ever tell you that they were cutting for the Andersons?

A. I don't remember that they ever did. I heard them speaking of it and talking about it.

Q. So you gathered that they were working for the Andersons?

A. Yes sir.

Q. Did Anderson tell you himself that they were working for him?

A. I don't remember that he ever did. He was there most of the time himself.

Q. With them?

A. Yes sir.

Q. Who was directing them?

A. Anderson.

Q. Anderson seemed to be the boss of the crowd, did he?

A. Yes sir, he seemed to be the boss.

406 One J. W. BOYKIN was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name, age and residence.

A. My name is J. W. Boykin. You want my postoffice?

Counsel:

Yes.

A. Sorrento. I am seventy-four years old, the 9th day of last March.

Q. You mean Sorrento, Florida?

A. Yes sir, west of here.

Q. Are you familiar with the neighborhood of Cacia?

A. Tolerable. I know several over there. I go to church over there sometimes.

Q. Do you know the Teresa Rodriguez grant?

A. No sir.

Q. (Continued) Sometimes called the Powell grant?

A. Oh, yes, when you come to the Powell grant, I know that. I have been all about it several times, up and down the creek.

Q. How long have you known that property?

A. Well, I was trying to think about that. I have been here about twenty—some odd years now. I come from Middle Florida down there. I am a native of Florida. And when I come here I paid no attention to that, you know. I was looking after my own business. And after a while I got to hearing them talk about the grant. It was known then as the Sanford grant. I inquired about it, and they said it laid back on Black Water. And, about the first I know or recollect about it, Ed. Thomas come out there and was on it, was about the first recollection I have about the grant.

Q. You know of his being on there, living on there?

A. Yes sir.

Q. Can you locate or place the time and the years that Thomas was there?

A. No sir, I cannot. I paid no attention to that, you know. It wasn't interesting to me at all.

Q. You simply know that he was there?

A. I know he was there, yes sir.

407 Q. Do you know of any other parties that were there?

A. There was no one else there.

Q. But after him?

A. There was McIntosh. He killed a nigger—

Q. Who did?

A. Ed Thomas did on the train going from here to Sorrento, and he had to skip.

Q. Has he been heard of since?

A. Which?

Q. Do you know anything about him since?

A. He is all right.

Q. But he is gone?

A. Yes sir, he has gone, he is not in the state. And McIntosh, then, my son-in-law, he had charge of it. I still paid no attention to it.

Q. McIntosh is your son-in-law?

A. Yes sir, he was, he is dead now, has been dead several years.

Q. Do you know who employed him?

A. Rand or Beardall, one or the other. Rand I think.

Q. For whom?

A. For the Colonization Company—no, I think it was Sanford—I am not certain about that.

Q. One of those two?

A. Yes sir, one or the other of them.

Q. Where did Thomas live on the grant?

A. He lived not far from the Powell place, at Seminole Springs, not far from an old mill there.

Q. There was an old mill out there when you went there?

A. No sir, it was gone. I think the dam is there now.

Q. The ruins of the mill were there?

Q. Why, some parts of it. Some of the logs was down in the bottom of the creek there.

Q. It showed to have been a mill?

A. Yes, I think Powell had the mill there.

Q. What part of the grant was this that Thomas was on, which side?

A. It was on the west end.

408 Q. Toward the west end?

A. Yes sir, I suppose near the middle.

Q. Near the middle of the west end?

A. Yes sir.

Q. What sort of a house or place was it that Thomas lived in?

A. Well, he lived in one of Powell's old houses a while, but later he built him a little house out there a piece, a pretty good cabin, good enough for one man and his dogs.

Q. Do you remember about how long he was on there?

A. No sir, I don't know. Several years, though.

Q. Several years?

A. Yes sir. I never paid no attention to it.

Q. Where is McIntosh?

A. He is dead now. He died at Bassenger.

Q. What part of the grant did McIntosh live on?

A. He lived on the south side.

Q. Did he build him a place there?

A. Yes sir, at what they called the Braedy Spring, a sulphur spring right up in the piny woods land.

Q. That joined with the others? The waters joined in the same stream?

A. Yes sir, they run right into the Black Water. He didn't use the sulphur water, though, he had a pump drove down in the ground.

Q. What sort of a place did McIntosh have.

A. Well, he just had a house there on the ground.

A. Did he have a clearing?

A. No clearing.

Q. He didn't cultivate any there?

A. No sir.

Q. How long was there?

A. I don't know how long he was there. Anyhow they cut his wages. He was getting twenty dollars, just the same as Thomas was, and they cut his wages down to five, and then he quit. Then my son Charlie looked after it for a short while, and they got Wofford to take care of it. John was on it some time. John was on it until this last man be-

409 fore I took it.

Q. Do I understand you that there has been somebody on it for the Colonization Company all the time?

A. Pretty much all the time, yes sir, looking after it. For a little while after John Wofford got off after John Wofford quit it, Laurance Owens looked after it. He was not on it, but he looked after it.

Q. Who was Owens looking after that for?

A. For the Wilson Cypress Company.

Q. You remember the time of the change of ownership, do you?

A. No sir, I do not. I couldn't remember any dates.

Q. You simply know there was a change?

A. Yes sir. He had it, and he got me to look after it in his place then.

Q. When did you go on there in charge of that place?

A. I think I went on in December, I think 1904—wasn't it?

Counsel:

I don't know.

A. Let's see, now. I have been on it a little over four years.

Q. Who employed you to take charge of this property?

A. Well, Mr. Owens spoke to me, for the Wilson Cypress Company. I suppose he was authorized to do that.

Q. From whom have you received compensation during all this time?

A. From the Wilson Cypress Company.

Q. Have you been continuously looking after it?

A. Yes sir, I have been on it two or three times a week. I sleep on it several nights along, and I have got a shack on it.

Q. How much going over this land do you do and have you done during all this time?

A. Well, I couldn't tell just how much time. I was on it or on part of it every week. It is a long piece, four miles long, and the Double Bridges are near the east end, you know.

Q. Have you a place there?

410 A. No sir.

Q. Have you a place on there, on that property?

A. Not there at the Bridges, it is up above there.

Q. Where is the place you have, where is it located?

A. At the Drawdy Spring. It is about half a mile, or three-quarters, from the southwest corner.

Q. Of the grant?

A. Of the grant, running east.

Q. What do you do in taking care and charge of the grant and keeping off trespassers? What are your duties and what do you do?

A. Well, I drive around it. I take my saddle in my buggy and drive around it, and in some places where I can't drive, I take out my saddle and ride. I have got notices up all around the grant.

Q. What sort of notices?

A. Warning trespassers on the grant.

Q. In whose name are these notices?

A. The Wilson Cypress Company, printed notices, the ones I have got now. I used to write the notices before we got our printed notices, and put them up on the trees, but they sent me a lot of printed notices.

Q. How generally are these notices placed up and around and about that grant?

A. I guess there is more than a dozen of them—I know there is, especially at the public roads and bridges and so on, and the corners of the grant.

Q. Are those notices plain?

A. Yes sir, in big print.

Q. In big print?

A. Yes sir. I have got none through the swamp. You know the line runs through the swamp, and I have got none on that side, but on the others I have.

Q. Is that swamp accessible for ordinary travel?

A. No sir, you can foot it through, but then you are surrounded by ponds and mud holes and so on.

411 Q. What proportion of that grant is swampy land?

A. You mean how much of it?

Q. Yes, how much of it?

A. Well, I don't know, sir. I expect there is three-fourths of it in swamp. I know there is a whole lot of it.

Q. What kind of timber is on this grant?

A. Well, there is cypress, some poplar, white bay and some magnolia.

Q. Where is the cypress timber?

A. It is generally along the swamp and up and down the run of the Black Water. It don't reach out in the edge much.

Q. Is there any timber on the pine land, the other part of it?

A. Yes sir.

Q. On the western part?

A. Yes sir, there is pine timber there, pretty good pine timber.

Q. What is the chief value of that property?

A. Couldn't tell you, I don't know what it is.

Q. I mean for what purposes?

A. Well, for the timber, I should think.

Q. The timber is the chief value, then?

A. Yes, sir; and I couldn't tell the value of that.

Q. Who do you make your reports to as agent for this property?

[A.] To the Wilson Cypress Company.

Q. Where are they?

A. They are in Palatka.

Q. During all this time that you have been on there and in charge of this property, have there been any other persons that have attempted to take possession or to occupy or go into possession of this property, other than yourself?

A. Well, no. Now, I had a notice put on my shack door. I have got a little shack about eight by ten, a little cottage, and I had a notice put on that door, that there is one right below, beside of a little pond east of my shack. Well, somebody come there and wrote on it, the best I could make
412 it out, "This is a roguish house." Well, I was watching and looking around to see if I could see anybody, and toward the last of the week, on Saturday I think it was, some person drove out there with a two horse buggy and tore it off. I haven't seen it since. I reckon he took it off. I lowed it was this person, Wilmott. I don't know who he was. I was coming down the grant and come in sight of him, coming the road out, and I put whip to my old pony and come in the road about a hundred yards ahead of him, and I hollooed at him. I thought he had come from my shack and I looked back there, and them horses got away from there. I don't know who he was.

Q. Has anybody else but that man been there?

A. Not that I know of.

Q. You have been watching for that purpose?

A. I have been watching ever since pretty closely. Well, I did see Mr. Roberts. He was not on the grant, he was running on the grant line, on the west end—Robinson, I believe his name was, the county surveyor of Orange County, and another man with him. I heard there was somebody on it surveying, and I drove around the grant, all around. And I come to a hatchet and a man's coat hanging up there, and I looked down the grant to see if any one was coming on it. I thought may be they had stopped to look at the timber or something. And then I turned by horse and looked the other way, and two men come up. Robinson was one of them. I think he told me his name was Robinson. He said he was a surveyor. I says, "Look here, I have charge of this grant. I would like you to explain yourself as to what you are doing here, if you can." That was the way I spoke it. I was sort of hostile. He says, "All right, I am not after the grant, I am just surveying some land over here the other way," which I believe was true. A mighty nice man, Mr. Robinson was. So I begged off then.

Q. Have you got the grant lines and corners
413 pretty well marked there?

A. Yes, sir; I went around to my grant corners most every week. They are well marked.

Q. Nobody has been in charge or control or possession of this property, actually, but you, then?

A. No, sir.

Q. In all this time?

A. No, sir; not since I have been on it.

Mr. Dewhurst:

We object to the question as to whether anybody has been in possession, and move to strike the answer, on the ground that it is a conclusion of law.

Cross-Examination.

By Mr. Dewhurst:

Q. Mr. Boykin, what is the grant called out there? What is it known as? You say it was known as the Powell Grant?

A. It is known as the Powell Grant; yes, sir.

Q. It was not known as the Rodriguez Grant? You didn't known it as the Rodriguez Grant?

A. No, sir.

Q. And it was not known, generally, as the Rodriguez Grant?

A. No, not that I know of. I don't know that I ever heard that name. If I did I paid no attention to it.

Q. How did Owens look after the grant before you took charge?

A. Well, he rode around it and put up some notices, rode around on the lines, I suppose or may be walked a little.

Q. For how long did he do that?

A. I don't know, sir. Well, I didn't know he was in charge of it until he come over and asked me if I would take it. You see, he said he had been looking after it, and said he had some business to do and asked if I would take it.

Q. How long have you been living near it?

A. I have been there about twenty-four years.

Q. How far from it?

414 A. A mile and a quarter.

Q. A mile and a quarter?

A. Yes, sir.

Q. And during that twenty years, how much have you seen it?

A. Well, I have been on it and over it about every month or two, going up to Cacia or going over to Mr. Royal's.

Q. Do the public roads pass though it?

A. Yes, sir.

Q. How many?

A. There are two, one at the upper end, the west end, and one at the Double Bridges, going over to Cacia.

Q. How much of the distance does this public road run through the grant? How much of it, how many miles of the public road are there through the grant?

A. Let's see—there are, I think, between three and four miles on the west end, and about half a mile or three-quarters on the east.

Q. Two different roads?

A. Yes.

Q. And one is about three miles on the grant and the other about the same?

A. No, sir; the east one ain't more than three-quarters, I don't think, through the grant.

Q. Three-quarters of a mile?

A. Yes, sir.

Q. And the other?

A. About three miles, nearly three miles. I think.

Q. That is inside the grant?

A. Yes, sir.

Q. Do you know whether those are public roads laid out by any public authority or just simply trails?

A. No; I think they are laid out by public authority. They are public roads and the county keeps up the bridges, and has the roads worked.

Q. Well, in going where you have to go for your mail and groceries, do you pass through this?

A. No, sir; I don't go through the grant for that, I go right west of my place.

Q. You say you have seen it about once a month during the years you have lived there?

415 A. I suppose so, yes. I don't know, though, sometimes may be there would be three months that I wouldn't see it.

Q. During the time that Owens took care of the place, who else had charge of it?

A. Well, just before Mr. Owens took it Mr. John Wofford had charge of it.

Q. What sort of occupancy did he have there?

A. Well, he had a good little shack, that is, good enough for a bachelor, and he looked after the grant and hunted, and had a little clearing.

Q. He had no family?

A. No, sir; he ain't got one yet.

Q. How often did he sleep on it?

A. Well, pretty regular. He lived on it.

Q. How often did he sleep off of it, away from it?

A. I don't know, sir, whether he did that or not. I stayed with him one night on the grant while he was there at the Double Bridges.

Q. Did he work anywhere else?

A. Mr. Wofford?

Counsel:

Yes.

A. No, sir; not that I know of.

Q. How did he make a living?

A. Well, he got five dollars a month and then he made some Irish potatoes on the grant, and some vegetables of different kinds, I suppose, I don't know how much.

Q. Did he do work in the neighborhood for wages? Would he work for other people?

A. Not that I know of; no, sir.

Q. Well, what did McIntosh do on it?

A. Well, he lived on it. He had a place right down opposite me, right close to me, but his family stayed on it all the time.

Q. His family stayed on the place?

A. Yes, sir; on the grant. I have got my shack now in fifty yards of where he had his. His was burned.

Q. His shack got burned?

A. Yes, sir.

Q. How long ago did his shack burn?

416 A. I don't know now, it has been burned, though, I reckon ten years. I don't know exactly.

Q. Ten years?

A. I don't know exactly.

Q. How long ago did you build your shack?

A. I built it about four years ago, a little over four years ago. Well, I had a tent there a little while before I built my shack, while I was working, building it, something over four years ago.

Q. Where does your family live?

A. They live right about nearly south of the grant.

Q. How far?

A. About a mile and a quarter, just a mile and a quarter on the line.

Q. What other neighbors have you got there?

A. Well, right around me there's none. George Mills is the next. Mr. Thompson, up there, he is living right close to the grant, right next to the grant.

Q. Is the grant wild, unsettled land?

A. Yes, sir.

Q. That whole neighborhood is pretty wild land?

A. Yes, sir.

Q. Has it ever been settled up?

A. Well, there have been several settlements there. The people have gone, though.

Q. How often do you drive around this claim?

A. Well, twice a week. Well, I don't go clear around it twice a week, but sometimes I do go around the whole eight sections.

Q. Then, how much of the swamp can you go through?

A. Very little of it. You can't drive through none of it hardly.

Q. Nor ride either?

A. You can ride through some.

Q. Very little of it?

A. A very little.

Q. Could anybody make a home or reside in that swamp?

A. No, sir; no one but John Wofford.

Q. Well, could he live within the swamp?

417 A. Well, he was at the Double Bridges, and it is a narrow swamp there. The woods makes right up to the creek, like, up to the creek run on one side, and there is very little on the other. It was almost in the pine woods.

Q. Could he go in the swamp and live?

A. No; I don't reckon, not for long, he might get sick.

Q. It would be inaccessible? He would have to wade through water?

A. No—well, he would in some places.

Q. Nobody would attempt to live in there?

A. No, sir.

Q. It isn't considered habitable?

A. No, sir; I don't think even a single man would go up in the swamp and build there, if he expected to live long.

Q. What did Owens tell you he wanted you to do?

A. He wanted me to look after the Powell grant.

Q. What did he tell you to do?

A. Well, to ride around it and live on it. And he helped me to get the lumber for the shack. I hauled it, but I think the Wilson Cypress Company paid for the lumber; though I hauled it and put up the shack. He wanted me to live on it and stay on it at night. He didn't expect me to stay regularly on it, but wanted me to stay on it as often as I could.

Q. Did he tell you how often you had better be on it?

A. No, sir; not exactly, I don't think.

Q. He said to be on it at night as often as you could?

A. Yes, sir; he has stayed with me on the grant at my shack one or two nights.

Q. One or two nights?

A. Yes, sir.

Q. Then you have tried to carry out his instructions to be on it at night as often as you could?

A. Yes, sir; and day time, too, to stay right around it or drive around.

Q. Are there people passing through on either of
418 these roads daily?

A. No, sir; not daily, but every once in a while. Well, there are turpentine wagons passing through, hauling turpentine to the station, but that is just a nigger driver and mules. The travel is pretty regular on the east end of it coming from Cacia.

Q. What did you write on the notices you put up before the printed notices were given to you?

A. Well, I wrote about the same as the printed notices. I just said, "Notice: All trespassing on this property is forbidden by the Wilson Cypress Company," and dated it, and so forth.

Q. The printed notices are about the same?

A. A little more on them, they threaten the law on trespassers.

Q. What do you mean by trespassing?

A. Well, I mean that there is no timber cut or nothing taken off of it or picked up, nothing. Even dead timber I don't think ought to be removed.

Q. You think nothing ought to be removed from it?

A. No, sir; according to my judgment.

Q. Was that the notice you had on your shack door, that same kind of notice you had on your shack door?

A. Yes, sir; against trespassing. If I had thought about it I would have brought that along with me.

Q. This whole tract of land is a wild tract of land, without any occupancy except what you have made?

A. I don't think there is anybody else living on it at all, if there is I don't know it. I have been all around it and all through it and all up and down the creek.

Q. It is a wild forest?

A. Yes, sir.

Q. Unoccupied, except what occupancy you have
419 had?

A. Yes, sir.

Q. And you have ridden around it once a week or so?

A. Yes, sir.

Q. And slept on it how often?

A. Once or twice a week. I have just got a bed up there and a mosquito bar, and so forth. I can cook and eat there.

Q. Did I ask you how often Mr. Wofford slept off the place?

A. I believe so.

Q. How often did he sleep off it?

A. I don't know that he slept off it at all. That was his home. He had no other place to sleep that I know of.

Q. What was the size of the shack he slept in?

A. About eight feet long and I reckon may be eight feet wide.

Q. Palmetto?

A. Part of it, and part boarded up, I think.

Q. Palmetto roof?

A. Palmetto roof, yes.

Q. That was the largest shack on it?

A. It was then. I have got a larger one now. I have got up and down boards and a top on it.

Redirect Examination.

By Mr. Haskell:

Q. State whether you exercise this care and go around and about on it for them in the day, as well as staying on it at night?

A. Yes; I go around it or on it a heep, often, in the daytime, and stay all night.

Q. Do you know whether it is known, generally, in the neighborhood that you are in charge of the place?

A. I think it is; yes, sir.

Q. How do you know it is?

A. Well, I have met people on it. I would tell them I was going on my grant or going to it. I called it "my grant" there.

Q. You haven't permitted anybody to take possession of that property while you had it?

A. No, sir.

Q. What have you done to prevent it?

420 A. Well, I put up those notices and go around and see that there is nobody on it.

Q. You are watching it?

A. Yes, sir; watching it now, the other day I was coming off it, and I looked back and saw Mr. Royal coming behind me, right behind me, coming on down. He noticed that I had been on it, because he knowed my road going to it and all. Also the other day, Saturday, I come in off it and Laurance Owens' son, Isra, he come right in behind me. Well, he knowed I had been on it that Saturday.

Recross Examination.

By Mr. Dewhurst:

Q. You told Mr. Haskell that you had prevented anybody from taking possession of it. Has anybody undertaken to take possession?

A. No, sir; that is my business to prevent them.

Q. Nobody has undertaken to take possession. No, sir; I don't know what this here tearing my notices down off the door meant. I don't know what that was.

Q. He called your house a "roguish" house?

A. That was the best I could read it. I don't know what he meant by that. I had never sold anything.

Defendant here offered in evidence duly certified, a copy of plat of Township 19, south of Range 28, East, and 29, East, being the Township Plat certified by the Commissioner of the General Land office at Washington, indorsed by W. D. Bloxam, Surveyor General, under date of May 28th, 1899, at Tallahassee, Florida; also indorsed as having been examined, compared with field notes and approved, June 20th, 1851, by B. A. Putnam, Surveyor General; and showing thereon the metes and bounds of Section 37, Township 19, south of Range 28, East and Section 41, Township 19, south of Range 28, East, being Teresa Rodriguez Spanish Grant, as in-
421 dicated on the map, containing 5426.82 in Section 37, and 5964 acres in Section 41, aforesaid.

And the said certified copy was filed in evidence without objection as Defendant's Exhibit No. 1, and is hereto attached and made a part of this report.

Defendant also offers in evidence power of attorney from the Florida Land & Colonization Company to Frederic H.

Rand, dated October 6th, 1899, filed for record in the office of the clerk of Circuit Court of Lake County, Florida, on April 23rd, 1900, recorded in Deed Record No. 35, at pages 538, diagonal 41.

Complainants object to the introduction of the said power of attorney in evidence, on the ground that the execution of the same has not been proven, and that there is no law in this state authorizing the admission of such instruments without due and competent proof of the execution of same. And further upon the ground that the signatures of the individuals purporting to be the officers of the party making the power have not been proved to be the genuine signatures of such persons; and further, that there is no evidence that the persons whose signatures purport to be attached thereto were the officers of the corporation purporting to have given the said power of attorney, and also that the seal attached thereto as the seal of the grantee in the power has not been proved, nor the authority to affix the same. It was here agreed between counsel that counsel for defendant be allowed to substitute for the said original power of attorney a duly certified copy thereof, subject, however, to the same objections as the original, and that counsel will at a later date furnish the master with the said certified copy, to be filed and attached hereto as Defendant's Exhibit No. 2, said paper not being furnished the master at this hearing, and the original thereof being retained by counsel.

422 Defendant also offers in evidence deed from the Florida Land & Colonization Company to the Wilson Cypress Company, dated May 3rd, 1900, filed for record in the office of the clerk of the Circuit Court of Lake County, Florida, May 10th, 1900, recorded in Deed Record No. 34, page 593.

Complainants object to the introduction of the said deed in evidence, on the ground that no sufficient possession of the property has been shown to warrant the execution of a deed as a valid conveyance thereof, and that the form of the deed is a deed of bargain and sale, and no right of seizen has been shown to exist in the grantor.

And the said deed was filed in evidence as Defendant's Exhibit No. 3, and is hereto attached and made a part of this report.

One F. H. GRIGGS was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Please state your name, age and residence?

A. Well, I live at Longwood, now, in Orange County. My age is about fifty-two. I'll be fifty-three my next birthday.

Q. Your full name?

A. F. H. Griggs—Francis Henry Griggs.

Q. State whether or not you are generally known as Frank Griggs?

A. Yes, sir; that is the way I am known.

Q. Where were you born and raised?

A. I was born in Georgia, Millidgeville, Georgia. And ever since I was about two years old I have lived in Florida.

Q. In Orange County?

A. In Orange County, this county.

Q. Have you always lived in Orange County?

423 A. Most all of my life; yes, sir.

Q. Did you ever live in what is now Lake County?

A. Oh, yes; it was Orange County, though, most of the time that I lived there.

Q. Did you ever live in the neighborhood of Cacia?

A. Yes, sir; within a mile of it, sir.

Q. At what place?

A. I lived at Hawkinsville, down on the river.

Q. How far is Hawkinsville from the Cacia settlement?

A. Why, it is about ten miles, I guess.

Q. When did you go there?

A. Well, it was somewhere about '74 to '76, '75 or '8, somewhere along there. It may have been earlier.

Q. How long did you live there?

A. Oh, I never kept any account of the time, somewhere from ten or twelve years, longer may be.

Q. Do you know the territory known as the Teresa Rodriguez grant or Powell Grant, in the neighborhood of Cadia?

A. Yes, sir; I have been there several times, a good many times.

Q. What do you know about that grant? Who was on it when you went there?

A. Preacher Powell.

Q. Do you remember his name?

A. No, sir; I don't.

Q. An old man or a young man?

A. He was an old man, quite old.

Q. Who else was there with him that you know of?

A. His son, George, and a son-in-law I suppose by the name of Slade—William Slade.

Q. William Slade?

A. Yes, sir.

Q. How long were the Powells on that property?

A. Well, they were there when I went over in that country, and they were there at my leaving there, but I don't remember what date I left there, to be positive about it.

Q. Where do you live now?

A. At Longwood, about ten or eleven miles south of here.

Q. What did the Powells do on that property that
424 you saw there?

A. They had a saw-mill there, a water-mill, and cut lumber and ground corn, and I think a portion of the time ginned cotton. I never had any cotton ginned there.

Q. Did you have any corn ground there?

A. Yes, sir; I have had corn ground there.

Q. Did you ever buy any lumber of them?

A. Yes, sir; I bought lumber there.

Q. Do you know anything about where the lumber was obtained that you bought there, where the lumber was obtained?

A. Well, no, sir. It was right around the mill there.

Q. Right around the mill?

A. Yes, sir; close enough to be hauled with teams to the mill.

Q. What did the Powells do on that property besides that, in the way of improvements, if any?

A. Well, they had houses built there that they lived in, and farmed a little, raised sweet potatoes and such things as that.

Q. You knew the places well, did you?

A. Yes, sir.

Q. Were they there continually in the period that you were there?

A. Yes, sir; some of them. I think Preacher Powell probably wasn't there all the time, but his son, George Powell, and Slade was, up to the time he left.

Q. Who appeared to have the ownership and control of that grant property all the time that these people were there, that is, when the old preacher was there?

A. Well, I called it and knowed it as the Powell property. There was no other name that I ever heard of.

Q. Was that generally known in that neighborhood?

A. Yes, sir.

Q. That he claimed to own this property?

A. Yes, sir; it was.

Q. It was called after him, the name, wasn't it?

425 Wasn't it known as the Powell Grant?

A. I have known it as the Powell Grant and the Powells were on it.

Q. Did you ever work at that mill?

A. I never did.

Q. You say you lived about ten miles from there?

A. I live about ten miles from there and a portion of the time I lived at Cacia, right close to the place, within just a few miles.

Q. Do you recollect about nine years ago testifying in reference to this grant matter?

A. Yes, sir.

Q. Before L. A. Field and R. F. Kreigsman, Commissioners, down at Longwood?

A. Yes, sir.

Q. The testimony you gave on that occasion stated the facts and the truth, did it?

A. Yes, sir; so far I know and can recollect.

Q. Who were the last ones that you know of were controlling and operating this property in any way?

A. Slade, as well as I remember.

Q. Slade was the last?

[A.] Yes, sir; I think so. Possibly George Powell might have been with him, but I think the last that I really know of Slade was there.

Q. Do you know any man by the name of Ed. Thomas?

A. Who?

Counsel:
Ed. Thomas.

A. No; I don't remember that I do.
Q. After the Powells, do you know any parties who owned this grant?
A. After the Powells?

Counsel:
Yes.
A. That owned it?

Counsel.
Yes.
A. Why, as well as I know it was bought by the Colonization Company.

Q. Who was their agent?
A. Their agent?

Counsel.
Yes.
A. Mr. Rand.

426 Q. Frederic H. Rand, here at Sanford?
A. Yes, sir; that is the way I understand it.
Q. Do you know anything about who owns that property now?
A. No, sir; I do not.
Q. You knew Preacher Powell well, did you?
A. Yes, sir.
Q. Also George W. Powell?
A. Yes, sir; I certainly did.
Q. Also William P. Lassiter?
A. I knew of him. I was not so well acquainted with him as the rest of the family.
Q. William Slade you knew well?
A. Yes, sir.
Q. These parties were continually in possession of that property, were they?
A. They sure were.

Q. They cultivated their properties there regularly each season?

A. Yes, sir; I don't know of any other change that I have any recollection of at all.

Q. During all the time that you were up in that country, did you ever hear or know of anybody that claimed that property, other than the Powells and those under them?

A. No, sir.

Q. Did you ever hear or know of any one being in possession there, except they and those under them?

A. No, sir; I did not.

Cross-Examined.

By Mr. Dewhurst:

Q. Mr. Griggs, how long ago did Slade leave there?

A. I don't know. I left there.

Q. It was prior to 1894, was it not?

A. I don't know about that.

Q. Well, was it any where between 1880 and 1890?

A. Slade was living there when I left there, sir. I don't know what time he left.

Q About when was that?

A. I don't have much recollection as to what time I did leave.

Q. Well, was it twenty years ago?

A. Yes.

Q. It was twenty years ago you left there?

427 A. I must have left there somewhere about twenty years ago.

Q. And you don't know anything about the persons that have been on the property or claimed the property since then?

A. No, sir.

Complainants here move to strike all of the testimony of the above named witness, on the ground that the facts testified to are all prior to the issuance of the patent to this land, and are immaterial and irrelevant.

One C. C. BOYKIN was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Mr. Boykin, please state your name, your age and your residence?

A. My name is C. C. Boykin, my age is forty and residence, Fort Pierce.

Q. Florida?

A. Yes, sir.

Q. In what neighborhood and where were you raised?

A. Why, partly in Lake County and partly in Gadsen. I came to Lake County when I was quite a lad.

Q. When did you come to Lake County?

A. In '83 I think it was, '82 or '83.

Q. Where did you locate there?

A. Near Sorrento, three miles east of Sorrento.

Q. That is near Cacia?

A. Yes, sir; about six miles, I guess, something like that.

Q. Please state whether you know the Powell
428 Grant or the Teresa Rodriguez Grant in the neighborhood of Cacia?

A. Yes, sir.

Q. A tract of about five thousand acres of land?

A. Yes, sir.

Q. You have known it ever since 1883?

A. Why, yes, a little while after we moved there, of course, I heard of it.

Q. Who did you understand owned that property at that time?

A. The Florida Land & Colonization Company I think owned it at that time, or directly after that, at least.

Q. What made you think they owned it?

A. Why, I didn't know, of course. That was the general talk.

Q. In the neighborhood?

A. Yes, sir.

Q. What did they do on that land?

A. Why, they didn't do anything on it that I know of.

Q. Do you know of there placing any one on the land in charge of it?

A. Yes.

Q. Who did they place there that you know of?

A. Ed. Thomas was the first man I know of.

Q. You knew him, did you?

A. Yes, sir.

Q. What did Ed. Thomas do there on the land?

A. He lived there on the land, had a house on it and lived there and farmed a little bit.

Q. What were his duties there?

A. To watch over the Grant, keep trespassers off and keep people from molesting the timber.

Q. Can you place about the time this was, what years?

A. I would say it was somewhere around '85, somewhere along there.

Q. Did Ed. Thomas stay there any length of time?

A. Why, yes; he stayed there several years. I don't recollect just how many.

Q. You recollect his being there, though?

A. Yes; four or five years, I suppose.

Q. Were you ever there with him and know of
429 his being there and watching the grant?

A. Yes; I have slept with him while he was there, several times.

Q. Did he tell you what he was there for?

A. Yes, sir.

Q. Who was there after Ed. Thomas, if you recollect?

A. Well, Mr. Fig, I think.

Q. How long was he there?

A. He was there only a few months. I don't think he was there a year, quite.

Q. Who placed him there?

A. The Florida Land & Colonization Company.

Q. What were his duties there?

A. He was with Mr. Thomas.

Q. Was that what he did?

A. Yes, sir.

Q. Who else was there?

A. My brother-in-law was there a while.

Q. Who was he?

A. McIntosh.

Q. Were his duties the same?

A. Yes, sir.

Q. Did he live on the grant, too?

A. Yes, sir.

Q. All these parties lived on the grant there?

A. Yes, sir.

Q. Did you ever work for the Florida Land & Colonization Company?

A. Yes, sir.

Q. What did you do there?

A. My duties was on the grant, to watch and keep off trespassers.

Q. How long were you there?

A. I think something like two years.

Q. Your home was on the grant and you lived there?

A. Yes, sir.

Q. You were a single man, were you?

A. Yes, sir.

Q. Did you do any farming?

A. No; I didn't farm any there.

Q. Who followed you in that same work for that company?

A. John Wofford, I think it was.

Q. Do you know who was there after he was?

430 A. I think my father was next.

Q. How long was Wofford on there, to your recollection?

A. I don't know, quite a while, though, a year or more, I should think.

Q. He followed you?

A. I think so.

Q. He stayed right there until your father went on?

A. Yes, sir.

Q. Who employed your father, if you know?

A. The Wilson Cypress Company—no, I believe the Florida Land & Colonization Company employed him first, if I am not mistaken. I couldn't be sure about that.

Q. But you know the Wilson Cypress Company employed him later?

A. Yes.

Q. He is in charge of that property now for the Wilson Cypress Company?

A. Yes, sir; for them.

Q. He has been there ever since Wofford left?

A. Yes.

Q. Were any of the Powells in possession of that property at all when you first moved there?

A. I don't know. I don't remember.

Q. You knew nothing about that?

A. No.

Q. During all that time that you lived in that neighborhood, has anybody claimed to own that property or been in actual possession of that property or any part of it, other than the Florida Land & Colonization Company and the Wilson Cypress Company?

A. No, sir.

Q. And those that they put there in charge of that property?

A. Yes; that is all.

Q. They have never been molested in their control of that property?

A. No, sir; none, whatever, that I know of.

Q. You prevented all trespassing when you were there?

A. Yes, sir.

Q. Or any attempt to take possession of the property?

A. In fact there were no attempts made.

Q. No attempts at all?

A. No, sir.

Q. You were watching there for that purpose, though?

431 A. Yes; that was my purpose there, my business there, to prevent any such.

Complainants here moved to strike all of the testimony of this witness as to the facts occurring prior to the issuance of the patent to this land in 1895, on the ground that same is irrelevant and immaterial.

Cross-Examination.

By Mr. Dewhurst:

Q. You say that in '83, when you went there, the general belief in the community was that the Colonization Company owned that land?

A. I think so, sir.

Q. And the general belief continued as long as you knew the tract?

A. Yes, sir; until the Wilson Cypress Company bought it.

Q. And then the general belief was that the Wilson Cypress Company had bought it of the Colonization Company?

A. Yes, sir.

Q. Did you ever hear of any claim of the United States to that property as United States land?

A. No, sir.

Q. Well, there was no understanding in the community of people that lived near it that it was United States land?

A. No, sir.

Q. You stated that the Colonization Company placed Mr. Fig on the land. How do you know that they placed him on the land?

A. Why, I saw some letters that he had from them.

Q. Saw what?

A. I saw some letters that Mr. Fig got from the Florida Land & Colonization Company, employing him.

Q. Well, how do you know that the Colonization Company placed Mr. McIntosh on the land?

A. Why, he told me they did.

Q. Who told you?

432 A. McIntosh told me that he did.

Q. That is the only knowledge you have of that?

A. Yes.

Q. Now, when did you live there, about what date?

A. How's that, sir?

Q. About what date did you live on there? What date did you occupy any part of the grant?

A. Why, some ten or twelve years ago, something like that, somewhere about eight to twelve years ago.

Q. What was the character of your occupancy? What kind of a house did you have?

A. Why, I had a one-room house.

Q. How big was it?

A. Why, about sixteen by twenty, may be.

Q. Who built it?

A. McIntosh built the house, I think, the one I lived in.

Q. Who did you say?

A. McIntosh.

Q. What part of the grant was it on?

A. Near the southwest corner of the grant.

Q. Was there any enclosure about it?

A. No; not at that place. Prior to that they had a house over on the west end of the grant that had an enclosure.

Q. Who had it?

A. The Colonization Company. That house burned and they built one at another place afterward.

Q. Who did you say had it before it was burned?

A. Thomas lived in it before it was burned.

Q. The Colonization Company had another house on it?

A. Yes, sir.

Q. Who lived in that house?

A. Thomas. The house Thomas lived in was burned and they built another house on a different place on the grant.

Q. Was anybody else occupying any part of the grant while you occupied it?

A. No, sir.

Q. How often did you sleep on it?

433 A. I don't know about that.

Q. Once a month?

A. Oftener than that, a good deal.

Q. Once a week?

A. Yes; sometimes I would sleep on it every night for a while, and then I would be away for a day or so at a time.

Q. Sometimes you would be away for a week or so, wouldn't you?

A. No, sir; hardly ever over a week.

Q. Were there some weeks that you didn't sleep on it more than one night in the week.

A. Very likely.

Q. What else did you do beside sleep on it? Did you turpentine any of the land?

A. No, sir.

Q. Did you cut and haul any logs?

A. No, sir.

Q. How long do you think Mr. Wofford was there?

A. Why, something like a year, I should think, may be longer, I won't be sure.

Q. He followed you?

A. Yes.

Q. How do you know that the Colonization Company employed Mr. Wofford to look after it?

A. Why, I don't know that they did, of course, but he was on it and said they employed him.

Q. He told you so.

A. Yes.

Q. What was he doing?

A. He was watching the grant, staying on it, living on it and I think he cultivated it some while he was there, had him a cane patch on it, I think, and grew some stuff there. I don't remember just what.

Q. How much land did he cultivate?

A. Oh, I don't know, only a small place, I think.

Q. A small patch?

A. Yes, sir.

Q. Was that small patch enclosed?

A. Yes, sir—I say yes—I couldn't be sure about that, either. I think that it was.

Q. You say that while you were occupying this shack or building on the place nobody attempted to commit any trespass on it?

A. No, sir.

Q. Or take possession of it?

434 A. No, sir.

Redirect Examination.

By Mr. Haskell:

Q. As a matter of fact this house was your home during all the time you were there?

A. Yes, sir.

Q. You were temporarily absent?

A. Yes.

Q. But that was your home?

A. Yes; I had a bed and a stove and things there to cook.

The witness L. J. OWENS then resumed the stand and further testified as follows:

Direct Examination.

Of [By] Mr. Haskell Continued:

[Q.] Do you recollect testifying before L. A. Field and R. F. Kreigsman in reference to this grant about nine years ago?

A. I do.

Q. Does the testimony you gave at that time state the facts and the truth in reference thereto?

A. To the best of my knowledge.

Complainants here moved to strike all that part of the testimony of the witness, L. J. Owens, which details any facts or circumstances prior to the issuance of the patent to this land in 1895, on the ground that same is immaterial and irrelevant; and move to strike all of said witness' testimony, on the ground that the facts stated do not constitute adverse possession, either at common law or under the statute of this state.

435 Cross-Examination.

Of [By] Mr. Dewhurst:

Q. You stated that your business was that of a surveyor?

A. It is, yes.

Q. And caretaker of lands?

A. Yes, sir.

Q. Please state how much experience you have had in surveying?

A. Why, I have been surveying more or less for over twenty years.

Q. Here in Florida?

A. Yes, sir.

Q. Is it not the law and practice that the lands surveyed as public lands in this state are surveyed into sections of one mile in acre, one mile each way, and that those sections are numbered from one up to thirty-six?

To which question defendant objects, on the ground that

it is not a proper cross, and calls for evidence not the best evidence.

Q. (Continued). Do you find that in your surveying?

A. Except grants.

Q. I am asking about public lands.

A. Yes, sir; the public land.

Q. The public lands are all surveyed in sections a mile square, and the sections run from one to thirty-six, as you find them throughout the state, do you?

A. Why, they are supposed to be.

Q. That is the general system?

A. Yes: it is.

Q. You find that as you resurvey the public lands, that the sections run from one to thirty-six?

A. Yes, sir; I do.

Q. Wherever you survey a Spanish grant or come across a Spanish grant in your surveying, is it not a fact that the sections begin at number thirty-seven, and from that run on up to different numbers in the townships?

To which question defendant objects, on the ground that same is immaterial and irrelevant and incompetent, and not proper cross-examination.

A. I couldn't be sure of that, unless I had made a special note of it.

Q. You stated so in your direct examination.
436 That is the reason I asked you. You said all Spanish Grants were numbered over thirty-six. Is it not a fact that in the surveys the sections in all Spanish Grants are numbered over thirty-six?

A. All I have run across are all grants. I don't know as to all Spanish grants.

Q. Where is your residence?

A. At present it is in Palatka.

Q. Where has it been for a number of years past?

A. Up to two years ago it was Cacia, Florida.

Q. It is in evidence that Cacia is about six miles west of this grant? Is that correct?

A. No, sir; it is a mile and a half north of this grant.

Q. How far? One mile and a half?

A. Well, excuse me, now I was figuring on where I live. The post-office is two miles from the grant.

Q. How long have you resided there?

A. Ever since '70, the year 1870.

Q. Up to what date?

A. Up to two years ago next month.

Q. What has been your general occupation during that time?

A. Why, it has been farming, timber getting and surveying.

Q. What interest had you in this Rodriguez or Powell Grant prior to the time that you were employed by the Wilson Cypress Company to look after it?

A. Up to that time?

Q. Yes, what interest had you in it?

A. I don't remember of having any.

Q. You had no interest in it, whatever?

A. I don't consider that I had.

Q. There was a short period that you ran a mill there?

A. Oh, yes; I cut shingle timber there for my father and Mr. Royal, cut some shingles on the grant in the first place about '74.

Q. And then from about what year did you run
437 the mill?

A. In '71 and '72—excuse me, it was '81 and '82.

Q. How is it then, Mr. Owens, that you can give the dates of every person who has ever been a caretaker on that land, and how long they stayed on it, if you had no interest in the land during that time? Isn't it a fact that you have learned all that since you have been employed by the Wilson Cypress Company?

A. Why, I was familiar in the country there that way. There are only a few people there, and every one of us, you might say, is familiar with every body else's business.

Q. Can you remember who lived on Section Twenty-four in that township and range in 1880?

A. What township and range, now?

[Q.] The same township and range that the grant is in?

A. What township and range do you call it?

Q. Township 19, Range 28.

A. Section 24?

Q. Yes. Who lived on it in 1880?

A. I don't think, sir, that anybody did. I think by looking

the map over I might say. (Referring to memoranda). I don't know of any one ever living on Section 24 since I have been here.

Q. Well, can you state when people went on these various sections and when they left these various sections that are still designated as Sections 20 to 24 in Township 19 and 29? Can you state when they entered upon them and when they left them, the dates?

A. I can come pretty near it, sir.

Q. All right state it. Can you state the date when any of these persons went on those sections, and the dates when they left them?

A. (Referring to map taken from witness' pocket). Why, I lived on Section 23, farmed there one year. My father owned the southeast quarter of Section 23 in the latter part of the '70's. I couldn't say positively what year. My sister went on to that property early in the '80's, and I think they lived there as much as ten years before she left there.

438 Q. Other than your immediate family, can you state when any persons went onto that particular tract of land there, and when they left any particular tract of land?

A. Buchanan went onto this same tract of land before my sister lived on it. And a man, Jacob Moody, lived on it prior to that.

Q. That is not the question. The question is what date and what year it was. What year did Buchanan go on that tract, and what year did he leave it?

Q. [A.] I think Buchanan was on about '77, and stayed on it a year or more.

Q. Do you remember that he was on it in 1877?

A. My father leased it to him to farm on. He owned the property, my father did; he acquired it in '76, bought it from Jacob Moody.

Q. Now, tell me about any lands in which your family were not interested—

To which question defendant objects, on the ground that it is unfair, and does not call the attention of the witness to any particular or reasonable matter as a test of his memory.

Mr. Dewhurst:

The question is not finished yet.

Q. State whether or not you can name the period of time at which any persons entered upon any of these sections, one to five and twenty to twenty-four, other than certain lands in which your family were interested, and state the time that they remained on the same and when they left.

To which question defendant objects, on the ground that same is unreasonable and unfair, and not a fair test of the witness memory, and does not put the witness upon notice of any specific matters about which his recollection is required as a test.

A. I can.

Q. How many could you tell?

439 A. The question is if I could tell the exact time they went on?

Counsel:

Yes.

A. Not the exact time, but I can tell you of numbers of people that lived on these sections, and some of them about the exact time.

Q. Now, can you tell the time when any person lived on the Pedro Miranda Grant in Section 40, Township 19, Range 28 and 29, and when and how long they lived there, and when they left? If so, how many persons and when? How many persons can you give such information in regard to?

A. I think I can, sir. I think that I can say that no one ever lived on Section 40 as a home.

Q. Who had charge of the Pedro Miranda Grant during the period that you lived in that neighborhood?

A. I, partially, in a way. I had charge of it, in a way.

Q. You had charge of some part of it?

A. Yes, sir.

Q. Who had charge of the other parts of it?

A. I say, in a way I had charge of Section 40.

Q. Who had charge of any other part of the Pedro Miranda Grant?

A. Section 39 was on the east side of the Wekiva, and I had no charge of it, that part of Section 39.

Q. Well, who had charge of the other part?

A. Why, George R. Fairbanks owned it.

Q. Who had charge of it?

A. I in a way. I looked after some timber on it, as to trespassing or anything of the kind.

Q. What was the character of the lands about the Rodriguez Grant, so far as settlement and occupancy was concerned? Was it generally occupied and settled upon?

A. The Rodriguez?

440 Counsel:

Yes.

A. The lands around it?

Counsel:

Yes.

A. Around near the northwest corner it was, on the north and northwest.

Q. Well, how about any other parts of the surrounding lands?

A. Well, on the west of the center of the west end of the grant there was a settler.

Q. One settler?

A. At that point.

Q. Who was that settler?

A. Issiah Turner.

Q. How long did he remain there?

A. Long enough to prove up a homestead.

Q. And then left?

A. Well, he didn't leave immediately after proving up, I don't think, I think he remained a while, a few years, possibly.

Q. What date did he leave there?

A. He left there about the year '96.

Q. What date did he enter the homestead?

A. I can't say, sir.

Q. What date did he make proof of homestead?

A. I can't say any more than he had proven up before he left there. I think he left in '96.

Q. Won't you designate on this plat, filed in evidence as Defendant's Exhibit No 1, where the Double Bridges are, and do it so the master can take it down, by pointing out how it is in relation to the section or township lands?

A. (Referring to map in question). Well, sir; they are a quarter of a mile north of the northeast corner of Section 24.

Q. How far to the west of the grant line are they, approximately?

A. About a hundred yards west of the east grant line.

Q. What is the stream that runs across the grant
441 called?

A. Black Water Creek is one, that is the principal one.

Q. What direction does the Black Water Creek run?

A. It enters the grant running southerly, until it gets pretty well across the grant, and then it turns to an easterly direction.

Q. What other stream runs through the grant?

A. The Seminole.

Q. And what direction does that go?

A. Easterly.

Q. What is the character of the land east of the Blackwater Creek and to the south of Seminole Creek?

A. Well, east of the Black Water Creek it is principally swamp, cabbage palmetto and pine and cypress.

Q. And south of the Seminole?

A. It is swampy, principally swamp, except the southwest corner of the grant, which is pine.

Q. Who made the first survey of this grant that you are aware of?

To which question defendant objects, on the ground that same is irrelevant and immaterial and calls for evidence not the best.

A. Mr. Rand made a resurvey first, to my certain knowledge, just reblazed the old lines.

Q. You mean some one employed by Mr. Rand?

A. I beg pardon—Mr. Berdall was the surveyor, I meant to say.

Q. Prior to that time had you been about the grant much?

A. Yes, I had.

Q. Had you been able to trace the lines of the survey prior to that?

A. I could. I was shown about where the east line was at the time my father and Mr. Royal got shingles on the grant, about the year '74.

Counsel:

I didn't catch that last.

A. I was shown by Mr. Powell where the east line of the grant was at that time my father and Mr. Royal were arranging with him to cut shingles, about the year 1874.

442 Q. You have stated that certain of the improvements were made on what would have been Section Nine if those section lines had been run through the grant. Is it not a fact that the eight sections which according to the public surveys come within the exterior lines of this grant have been run and the corner posts set or marked?

A. Yes; this was different from any grant I usually come across in that respect, the section corners to Sections Nine and Sixteen were there, apparently, the section corners, the original government section corners, with the marks on them; they are standing there to-day, and when I first was there. As to the other lines of these sections, except the north line of Section Nine, I am not sure. I never hunted for the posts of it inside the grant. But on the southwest corner of Section Sixteen the post of it is standing, inside the grant about a hundred paces, a hundred yards either way, from the south and west.

Q. Now, how about the other sections. Are not the corner posts of those sections, according to the public surveys marked there acording to the public surveys, either been placed there and are gone, or are there now?

A. Some sections? Of the sections, you mean?

Counsel:

Yes, the sections.

A. All around the grant?

Q. The outside section lines of the eight sections that are inside the grant, is what I am trying to get at?

A. I never looked for them, sir.

Q. You never looked for any?

A. I never looked for any in the interior.

Q. Have you ever looked to see if any of the section corners, according to the public surveys, corresponding to the sections which are outside the grant lines, are not placed within the lines of the grant?

A. Yes, they are, some of them that I have noticed, that is, the outside lines, the lines next to the outer edge of the grant.

443 Mr. Cooper:

He says inside the grant.

A. Inside the grant is what I mean.

Q. When you stated in your direct testimony that the grant lines ran about seventy yards outside the section lines all around, you knew where the section lines were that were within the grant, that is, you knew where those section lines were placed?

A. Yes.

Q. Is that the fact on the north line of the grant, that these section lines, in accordance with the method adopted in surveying public lands, show the blazed lines on the north side of the grant?

A. I never did hunt there to see whether they were blazed or not.

Q. Well, is it a fact that the section lines, in accordance with the surveys made of public lands, on the south side of the grant are blazed and show?

A. There are some of those.

Q. Some of them do?

A. Yes, sir.

Q. Then, when you stated that the grant line was about seventy yards outside of the section lines all around, you referred to the section lines according to the public surveys, of sections one mile square?

A. Partly. I had the field notes to the grant showing how far distant the corners are, the corners standing outside the grant, from the grant lines all around.

Q. State just what you did mean when you stated that the grant lines were plainly blazed about seventy yards outside of the section lines all around?

A. Having surveyed lands and made other surveys around the grant, I find that it is obliged to be the fact.

Q. From what?

A. I find it is obliged to be a fact that the section lines inside the grant lines would be there, from surveying the surrounding or adjoining lands.

Q. And you have seen the United States Sur-

444 veyor's posts of Section Sixteen and Section Nine?

A. Yes.

Q. Inside the grant?

A. Yes, sir.

Q. But no others?

A. On the east I know of one. I never heard of any others.

Q. Which one is that one on the east?

A. (Referring to pocket map). It would be the southeast corner of Section Twelve.

Q. Is the outside line of Section Twelve blazed?

A. I didn't look for the blazes at that point.

Q. You have stated that the timber on this land is valuable. About what is the value of the timber standing on this grant?

A. I have never made an estimate of it, sir, as to the amount.

Q. Will you approximately state, without any detailed estimate, as nearly as you can state it?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

A. I couldn't say, sir, and give any satisfactory idea.

Q. Would you say that it was more than usual value?

A. Why, at present or for the past five years it has been of more value than heretofore.

Q. No, I mean, is it more valuable than the timber standing on the generality of lands in that vicinity?

A. I can't say that it is.

Q. Your business as a caretaker for the Wilson Cypress Company takes you over considerable tracts of other land, does it not?

A. It does.

Q. Do you find that the timber upon the United States land has been cut to any considerable extent in the years past?

445 To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

A. I find some every year.

Q. There is testimony in this case that when the Powells

had their mill there the settlers in the vicinity would cut the timber upon the public lands and bring it to the mill to be sawed. Has that been generally done by people in that neighborhood?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

Q. [A.] Only in this instance, that I know of.

Q. How do you remember the particular time when Mr. Slade cut poplar upon this land?

A. Cut lumber?

Counsel:

Poplar.

A. Why, my father got some from him for making a wagon bed, in one instance, and I saw some other about that time.

Q. And in that way you recollect by your father getting poplar for a wagon the time that he cut it?

A. After he cut it.

Q. Do you recollect when he cut any other wood?

A. Why, he was cutting other timber there for several years.

Q. What time did he cut any sweet gum?

A. I can't say that I ever saw or noticed any sweet gum lumber around the mill that he had cut?

Q. What time did Mr. Slade cut any cedar?

A. I should say about '75 or '76. About that year my father got some from him. I have the cedar yet, part of it.

Q. You testified that this land wasn't put to any use while Mr. Sanford owned it. Is that correct?

A. I don't know of any use that it was put to.

446 Q. How do you know that Mr. Sanford ever claimed to own it?

A. Mr. George W. Powell told me he was selling it to Sanford or rather he told me he had sold it. And it was generally understood that it was sold.

Q. At that time or at any other time during the period up to 1890, had you ever heard that the United States claimed this land as public land?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and is not proper cross-examination and seeks evidence not the best evidence.

Q. [A.] I never did that I remember of.

Q. How do you know in whose interest Mr. Beardall made a survey of the land?

A. Because I asked him, talked to him in regard to a cemetery that was on the west end of the grant.

Q. What did Mr. Beardall say about the cemetery?

A. Why, Mr. Beardall said that at any time that he could be of any assistance in making a deed (the deed had been lost, it appeared, that Mr. Powell had made to the cemetery) and Mr. Beardall said that he would be glad to make an effort to get another deed to it made to the trustees.

Q. Do you know whether or not Mr. Beardall was employed by the legal representatives of the Rodriguez people at that time?

A. That he was.

Q. Whether he was employed by the Rodriguez people?

A. No; I don't know that I ever heard of his being employed by the Rodriguez people.

Q. When did you first hear about the Rodriguez people?

447 To which question defendant objects on the ground that same is irrelevant and immaterial and not proper cross-examination.

A. In '96.

Q. What did you hear about them, then?

Same objection as above.

A. I just heard that there was some Spanish heirs making a claim or going to make a claim to the Powell Grant.

Q. How soon after that were you employed by the Wilson Cypress Company?

A. About four years.

Q. About four years?

A. About that, I suppose—Oh, I was in their employ at the time.

Q. You were employed by the Wilson Cypress Company when you heard about them?

[A.] About that time, yes.

Q. When did you first enter the employment of the Wilson Cypress Company?

A. Some ten or twelve years ago.

Q. Some ten or twelve years ago?

A. Yes, sir.

Q. Did you enter their employment before they bought the claim of the Florida Land and Colonization Company to this land?

A. Yes; I was employed a portion of my time by them before that.

Q. Now, then, how long before that?

A. More or less for four or five years, I presume.

Q. It is in testimony that a Mr. Martin, an attorney from Washington, the representative of the Rodriguez heirs, came on this grant and posted certain notices. Did you see those notices?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and because there is no testimony that Mr. Martin posted any notices, and because it is not proper cross-examination.

A. No, sir; I never saw one of his notices.

Q. Did you ever see Mr. Martin?

A. I did.

Q. When did you meet Mr. Martin?

448 To which question defendant objects, on the ground that same is immaterial and irrelevant, and not proper cross-examination.

A. In '96 or 95. I think it was in '95, '95 or '96.

Q. Where did you meet him?

Same objection as above.

A. I met him at Tavares first.

Q. What conversation did you have with him in regard to this grant?

Same objection as above.

A. Why, he advised me that he was acting as attorney for some Spanish heirs that he said claimed the Powell Grant or the Rodriguez Grant. He asked me to show him on the map where the grant was located.

Q. Was it this particular grant?

A. This particular grant.

Q. What else did he say?

Same objection as above.

A. I can't recall.

Q. Did he say he had come to take possession of it?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and not proper cross-examination, and because it seeks evidence not the best.

Q. [A.] He said he had come to have some papers recorded.

Q. And look after it? He had come to look after the property, had he?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and not proper cross-examination and seeks evidence not the best evidence, and because the attorney is seeking to put evidence in the witness' mouth.

449 (No answer).

Q. What else did he say that he had come to do?

A. I can't recall.

Q. He didn't ask you to do anything?

A. Nothing that I remember.

Q. Have you a brother by the name of J. M. Owens?

A. No, sir.

Q. Or a cousin?

A. Yes, a cousin. I have a brother named J. P. Owens.

Q. Do you know whether he was employed by Mr. Martin to look after this property?

To which question defendant objects, on the ground that same is immaterial and irrelevant and not proper cross-examination.

A. Only from heresay. [hearsay]
Q. What did you learn from hearsay?

To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best and is not proper cross-examination.

Q. [A.] Well, I understood that Mr. Martin got my brother to stop the cutting of some palmetto boots that were being cut at the time on this land, cabbage boots or cedar—I think it was cabbage boots, by these Anderson brothers.
Q. Did your brother stop them from cutting?

Same objection as above.

A. No, sir; he came to Sanford or wrote—had some correspondence with Mr. Rand and I don't know—he didn't stop any cutting.
Q. About what time was that?
A. That was in '75 or '6.
Q. In '75?
A. Excuse me—'95 or '6.
Q. Who was occupying this land at that time?
A. I think John Wofford was. Wofford was.

Q. Are you sure that anybody was on at that
450 time?

A. About that time, I am sure. I think he was on it before and after that. That is the best of my recollection.
Q. Well, have you any knowledge as to whether or not any one was on it at that time, so that you can swear positively that any one was on it at that time?
A. To the best of my knowledge there was.
Q. State what fact renders you capable of stating that there was anybody on this land at the time that Mr. Martin was here?
A. About that time I let John Wofford have some sugar-cane to plant on that grant.

Q. What was the month that you let him have the sugar-cane?

Q. [A.] Why, it was about the month of February or March.

Q. February or March of what year?

A. I couldn't recall the year.

Q. What did Thomas do on this land?

A. He made his home on it, hunted the greater part of his time, and trapped.

Q. How much land did he cultivate on it?

A. Why, I can't say just, possibly an acre, possibly more.

Q. Outside of the acre that he cultivated the lands were entirely unoccupied?

A. Yes; while he was there.

Q. They were what were known as wild lands?

A. They were not in cultivation, nothing in cultivation except what he cultivated.

Q. And no enclosure?

A. There might have been around the Pendleton property.

Q. That was an independent property?

A. Inside the grant.

Q. And is still an independent property, not claimed by the Wilson Cypress Company, ain't it?

A. The Wilson Cypress Company don't claim it.

Q. Do you know whether the Pendletons claim title under the Rodriguez heirs?

451 To which question defendant objects, on the ground that same is immaterial and irrelevant, and seeks evidence not the best and is an improper cross-examination.

A. I do not know—do I know whether they do or do not?

Counsel:

Yes.

A. I don't think that they do.

Q. Do you know whether they do? I didn't ask you what you thought. I asked if you knew.

A. To the best of my knowledge they don't.

Q. On what is that knowledge based? Have you ever seen

their title deeds? Have they ever exhibited to you their title deeds?

A. No they have not.

Q. How do you know then, that they don't claim under the Rodriguez heirs?

A. They owned it before the Rodriguez heirs were ever known in that section of the country, that I know of.

Q. You stated that a homesteader near the grant had boxed some trees beside the grant line. On what land was the homesteader living?

A. (Referring to the map.) On section eight.

Q. That is on the west side?

A. The west side.

Q. What was done in regard to the homesteader's cutting on the land inside of the grant line?

A. I couldn't say.

Q. Did the homesteaders claim any rights under the Rodriguez heirs?

A. None whatever.

Q. You stated that Mr. Jones did not live on this land, but came out with Mr. Beardall in making a survey. Did Jones ever live on the land?

A. I don't remember ever having seen Jones on the land except the day I met him on the survey with Mr. Beardall and Mr. Thomas.

452 Q. How do you know that Mr. McIntosh was employed by Mr. Rand?

A. Why, I have heard Mr. McIntosh say so and I have seen him living on the lands.

Q. That was before Mr. Martin came there?

A. Yes sir.

Q. You have testified that you understood that Mr. Boykin represented the Colonization Company. How did you know or understand that Mr. Boykin represented the Colonization Company?

A. Mr. Boykin told me that he did.

Q. How long did Mr. Boykin stay on it?

A. I am not sure, sir.

Q. He had gone prior to 1893?

A. I am not positive.

Q. How do you that Anderson was authorized by Mr. Rand to cut on this land?

A. From a letter that my brother told me he got from Mr. Rand.

Q. Which brother is that?

A. John D.

Q. The same one that Mr. Martin employed to look after the land?

A. The same one that Mr. Martin arranged or tried to arrange with.

Q. To look after the land?

To which question defendant objects, on the ground that same is immaterial and irrelevant and proper [improper] cross-examination.

Q. [A.] To look after some other work, and to look after the cutting of this cabbage palmetto, or palmetto boots.

Q. Then your brother showed you a letter from Mr. Rand permitting the Andersons to cut it?

A. Yes sir.

Q. Do you know the date of that letter?

A. No sir, it was in '95 or '96.

Q. How do you arrive at these dates, Mr. Owens?

A. Some of them from one occurrence and some from another.

453 Q. Can you remember other facts that happened fourteen or fifteen years ago as well as you can remember the dates when these several persons lived on this land?

A. Fully.

Q. How much of this information in regard to these dates have you learned since you were employed by the Wilson Cypress Company, and how much prior to that time?

A. I can't understand the question.

Q. How much of this information in regard to these dates when these different men were on and left this land have you acquired since you worked for the Wilson Cypress Company, and how much did you acquire previously?

A. Why, I am just stating the best of my recollection.

Q. Is it a fact that you have interviewed each of the witnesses that have been called at this hearing prior to their giving their testimony?

A. No, I have not.

Q. Is it a fact that you have interviewed most of them?

A. Part of them, in common conversation, discussing it. They would ask me questions.

Q. Is it not a fact that you have procured the attendance of nearly all of these witnesses?

A. I have, sir.

Q. Is it not a fact that since you have been employed by the Wilson Cypress Company you have been gathering information in regard to this grant?

A. Why, not in particular, sir.

Q. Have you discussed the legal phase of the occupancy and its legal effect with the attorneys for the company?

A. I have occasionally, sir, in common conversation.

Q. Why did you testify in your direct testimony that these improvements were on some part of where section nine would be if the lines were run through the grant, while in your cross-examination you admit that the lines of section nine had been run through the grant and the corner posts?

454 A. From the fact that I know where the corners will fall, if the lines had been run.

Q. Why were you particular to limit your description to saying it was where section nine would be, rather than saying it was where section nine was?

A. Well, because I have never been all around the lines of it, where it would be.

Q. Then the fact that you wanted it to appear that this land had been surveyed as a Spanish grant didn't influence your testimony?

A. I wanted it to appear that the corners on the west line of nine and sixteen are there, standing.

Q. You wanted it to appear that way?

A. As a matter of fact.

Q. You wanted it to appear that way?

A. As a matter of fact.

Q. And that was the reason that you limited your statement as to the location of these improvements to the lands which would be in section nine if the lines had been extended?

A. I didn't know that the lines had ever been extended. I never looked them up.

Q. Yet you did know that the corner posts were standing there?

A. The corner posts were standing there on the west. I

didn't say there were any corner posts standing on the east or southeast.

Q. What kind of camp did Wofford have?

A. He had three different camps, mostly built of palmetto fans.

Q. When did he desert his north camp?

A. I am not positive as to the date. It was prior to 1895, I feel positive.

Q. He had left it prior to '95?

A. Yes sir, and moved to his south camp.

Q. Can you state the location of his south camp?

A. Pretty closely sir. (Referring to map.) It was near the southeast corner of section sixteen.

Q. How near that corner?

A. Possibly a hundred yards.

455 Q. A hundred yards north or south of it?

A. West.

Q. You said that about four years ago you ceased to have charge of the grant? I think you said so, didn't you? And that you employed Mr. Boykin about four years ago?

A. About four years ago I employed Mr. Boykin.

Q. What were your instructions to Mr. Boykin?

A. To keep off trespassers, prevent trespassing, see that no one trespassed.

Q. What were you doing prior to that?

A. Why, I was working for the Wilson Cypress Company part of the time.

Q. The other part of the time you were surveying and doing work for other people?

A. I did do some. Well, up to a short time before I employed Mr. Boykin I had only been working for the Wilson Cypress Company a part of the time.

[Q.] From 1900 to 1904 did you look after the land?

A. I did, yes.

Q. What did you do?

A. Why, I posted some notices on the grant forbidding trespassing, in the name of the Wilson Cypress Company, and was quite often over the grant at different points, seeing that there was no trespassing.

Q. What do you call quite often?

A. Why, sometimes every day in the week and sometimes

one day in the week, sometimes it would possibly be two weeks. Sometimes I was on the grant every day in the week.

Q. Did you go on foot or horseback?

A. Both.

Q. And sometimes in a carriage?

A. Yes, sometimes in a carriage, on some parts of it.

Q. You stated that there was no attempt by anybody to commit any trespassing during that period?

A. While I was looking after it solely, no one that I remember of, except that during that period I found that Overstreet had boxed some timber on the southwest corner.

456 Q. He said that was done by mistake?

A. Yes sir.

Q. What acts of possession did Mr. Henry S. Wilson ever make upon this land?

A. He was over it, a greater portion of it with me.

Q. Rode over it?

A. Drove over it and walked some.

Q. In a carriage with you or horseback?

A. In a carriage. We rode to the land in a carriage, and then we took it afoot.

Q. What date was that?

A. It was in the early part of the year 1900, the best I can remember, sir.

Q. Was there any one on the land at that time?

A. John Wofford was living on it.

Q. Did you have a cabin or a house on the land?

A. I did not.

Q. Where did your family reside during the four years in which you had charge of the land?

A. A little less than a mile and a half north of the grant.

Q. Did you reside with your family at that time, when you were at home, when you were in that vicinity, I mean?

A. Yes. I camped on the grant some few times, but I didn't have any house on it.

Q. How long a period of time, at any time, did you camp on the land?

A. Over night. Never, I don't think, more than one night at a time.

Q. What was the nature of the notice that you posted, or notices?

A. Forbidding trespassing of any kind without permission from the Wilson Cypress Company.

Q. When did you first put up these notices?

A. Soon after the Wilson Cypress Company bought it.

Q. Why did you do that?

A. Why, I did it because I was advised to, instructed by the Wilson Cypress Company, and to advise people who might claim the land, and prevent trespassing.

457 Q. Mr. Owens, my associate tells me that you have made him the statement that Mr. Overstreet did not pay for the timber cut on that land.

A. Mr. Overstreet told me that he did.

Q. Mr. Overstreet told you?

A. Yes sir.

Q. Then you have no other knowledge about it except what Mr. Overstreet told you?

A. Only that he paid Mr. Henry S. Wilson. He said that he and Mr. Henry S. Wilson settled it.

Q. Were those the words he used, that he and Mr. Henry S. Wilson "settled it"?

A. Yes sir. Well, that was not all the words. He told me what he paid. The amount was thirty dollars.

Further Cross-Examination.

By Mr. Jones:

Q. Mr. Owens, didn't you go to school in Orlando a while?

A. In '72, sir.

Q. In '72?

A. Yes sir, from July, '72, to Christmas.

Q. And into '73?

A. No. I don't think, Colonel, that the school extended into '73.

Re-Direct Examination.

By Mr. Haskell:

Q. You have been asked on cross-examination, Mr. Owens, what Mr. Henry S. Wilson, for the Wilson Cypress Company, did on that land when he was on it. I want to ask whether he gave you any directions as to what to do about that land at that time, while he was on the land with you, about what he wished you or Wofford to do.

A. At the time we were on it I don't remember especially as to directions, but very soon afterwards I know he gave me directions.

458 It is here noted on the record by agreement of counsel that the witness J. W. Wofford came to this hearing from Cacia, Florida, and is entitled to pay for two days.

That the witness J. W. Boykin came to this hearing from Sorrento, Florida, and is entitled to pay for two days.

That the witness Frank Griggs came to this hearing from Longwood, Florida, and is entitled to pay for one day.

That the witness L. J. Owens came to this hearing from Palatka, Florida, and is entitled to pay for three days.

The hearing was here adjourned, subject to further notice.

459 And on Tuesday, August 3rd, 1909, at two o'clock P. M., pursuant to notice previously given, the taking of testimony in said cause was resumed, at the home of one Ivey Royal, at Cassia, Lake County, Florida.

Present: J. H. Jones, Esq., of counsel for the complainants; E. E. Haskell, Esq., of counsel for the defendant; and the said Special Master.

And thereupon the following testimony was taken:

One IVEY ROYAL was duly sworn as a witness for the defendant, and testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name, age, and residence.

A. Ivey Royal, seventy-eight years old, nearly seventy-nine.

Q. Your residence is at Cassia?

A. Yes sir, right here.

Q. How long have you resided here, Mr. Royal?

A. Since December of '60, 1860.

Q. 1860?

A. Yes sir.

Q. Do you know the premises known as the Rodriguez

grant, sometimes called the Powell grant, known on the United States surveys of the public lands as Section 37, Township 19, South of Range 28 East, and Section 41, in Township 19, south of Range 29 East, comprising a tract of land 5,486.46 acres, or thereabouts, here in Lake County?

A. Yes, I know the lay of the land.

Q. How long since you first knew of this tract of land?

A. Well, right near the time that I lived here, just a short while after I did move here I knowed of it.

Q. How did you come to first know of that property?

A. Oh, well, I was just told so by other people, you know.

Q. Has it been a recognized tract of land all this time, known as the Rodriguez grant?

A. Well, yes, better known, though, as the

460 Powell grant.

Q. It is the same grant?

A. The same grant, yes.

Q. Do you know how it got the name of the "Powell grant"?

A. Mr. Powell came into possession of it.

Q. What Mr. Powell.

A. George Powell.

Q. What was he? What was his calling?

A. He was a Baptist minister.

Q. A Baptist minister?

A. Yes. And when he come in possession of that land he put up a mill out there on it.

Q. Do you recollect about when this was, when he first went into possession of that property?

A. No, I don't exactly, it was—the dates I have forgotten.

Q. Do you recollect testifying about this particular property, in relation to this same property, before R. F. Kreigsman, and L. A. Field, as commissioners, about nine years ago, about the year 1900?

A. Recollect what?

Q. Testifying in reference to this property before them as commissioners?

A. No, I never went before them as I know of.

Q. Do you remember their coming here?

A. I recollect your coming, and Lawrence Owens was along. Was there two other men?

Counsel:

That is the time I have reference to.

A. Yes, I recollect that.

Q. You recollect testifying at that time?

A. Yes, at that time, and the dates I gave you then—

Q. (Interrupting) The dates you gave then were correct?

A. Yes, to the best of my recollection.

Q. You don't remember now what the dates were?

A. No sir, I can't.

Q. You can't say the years at this particular time, I understand you, now?

A. That you were here?

461 Q. No, the dates you testified about then you can't recollect now?

A. No, I don't remember them now.

Q. But you do recollect testifying at that time, and you state that whatever you testified at that time was the truth, as I understand?

A. Yes, what I said at that time.

Mr. Jones:

Complainant objects to the manner of conducting the examination, as being leading.

Q. Do you recollect clearly the fact that Preacher Powell did, or the time when he did, come and occupy this land?

A. The time that he did come?

Q. Yes, do you recollect the time, without giving the dates?

A. You mean the time of the year that he settled down or come there?

Q. Well, the fact that he did come.

A. Oh, yes, he did come, and was there I know for several years.

Q. What did he do there?

A. Why, he come there and put up a mill there on the property, was about all he did do, a saw mill and grist mill.

Q. Was there a gin mill connected with it?

A. Yes, there was, for a little while.

Q. Did he saw any lumber there?

A. Oh, yes, he sawed lumber there for quite a while.

Q. Where did he get it from?

A. He cut it off of that grant property or land.

Q. Off the grant property?

A. Yes sir.

Q. How do you know he sawed lumber there?

A. Because I have seen him at it, and I have hauled it from there. This lumber in this house was sawed there.

Q. The lumber in this house was sawed in that mill by Preacher Powell?

A. Yes, all the lumber for the partitions in the house, and

Q. What did Powell do there, and where did he

462 live?

A. He lived just on the east side of the springs that the mill was on, on the hill, a short ways from the mill.

Q. State whether he built a house there.

A. Yes sir, he built a house there.

Q. Did he cultivate the ground, or not?

A. No, he didn't. One of his sons or sons-in-law did cultivate some potato patches and little things such as that there, was about all.

Q. How long did they occupy that property in that way?

A. While under cultivation?

Counsel:

Milling and cultivation and all.

A. Well, I don't know; it was, as well as I recollect, about five or six years, or maybe not quite so long; I disremember.

Q. Your recollection is not clear as to the time?

A. No, as to dates I can't remember.

Q. Did they have any cattle, the Powells ?

A. No sir—well, they had some oxen that they hauled logs with.

Q. They did their hauling with oxen at that time?

A. Yes sir.

Q. You referred to other parties that did this cultivating Do you know who they were?

A. Well, one was a son of the same name, George Powell, Jr., and then there was William Lassiter, his son-in-law.

Q. You knew all these parties well, did you?

A. Yes sir.

Q. Was there any other mill around in this vicinity at that time?

A. No sir.

Q. Has there been since?

A. Yes, there's been some steam mills, there's been steam mills in the vicinity around there. There was one right across this creek here a mile or so, and another over five miles or so.

463 Q. State whether Powell exercised his occupancy and control of this property as to all of this grant property, if you know?

To which question complainants object, on the ground that same calls for the legal conclusion of the witness.

The Witness:

You mean, did he lay claim to the whole of it?

Counsel:

That is what I mean.

A. Yes, I think he did, to the best of my recollection.

Q. Was there any one else during all the time he had it that contested in any way his claim, or set up any claim against him?

A. No, not during the time he was in possession of it, any further than a mortgage. I think he give a mortgage on it to General Sanford. He run him there for quite a while and kept him in provisions, and such like, and he couldn't pay it, and he give a mortgage on the property for what he owed General Sanford. That was the way he come to lose it; the mortgage took it, he couldn't redeem it.

Q. What became of the Powells then?

A. The Powells moved away, left the country.

Q. They lost the property to General Sanford?

A. They lost it, yes sir.

Q. Do you know what has happened to that property since? Do you know anything about that?

A. Well, no, I don't know much about that, any further than what I have heard.

Q. You say the lumber in this house you obtained from the Powells?

A. I did.

Q. While they were running the mill?

A. Yes sir.

Q. Did you ever purchase any timber or lumber of any kind from the Powells off that grant yourself?

A. Well, I got this that I built this house of, is all.

Q. Do you know Andrew Owens?

A. Yes, I did know him during his life.

464 Q. State whether or not you purchased any cypress timber from the Powells, with Andrew Owens.

A. No, I never did.

Q. I call your attention to this part of your testimony, given before the commissioners in 1900: "He sold to me and Andrew Owens, I think two or three years after he first went on there, some cypress timber from which we made some shingles, for which we paid him."

A. Sure enough, we did, yes.

Q. I ask you if that was not a fact.

A. Yes, we got some timber for about twenty-five or thirty thousand shingles, it made about that many.

Q. Then you didn't recollect that when you answered a minute ago?

A. No, I didn't think of that.

Q. Do you know Mr. Beardall?

A. Yes sir.

Q. In his lifetime?

A. Yes sir.

Q. What was his occupation?

A. Now, I don't know, sometimes one thing and sometimes another. I don't know just what he did claim for an occupation mainly.

Q. Did you know him as a surveyor?

A. Well, yes, I think he used to survey around some.

Q. Do you know whether he ever surveyed this grant or not?

A. Well, I was told he did, I didn't see him at it. I saw fresh work that they said was his work where he had surveyed.

Complainants move to strike the last answer on the ground that the same is hearsay.

Q. Did you ever do any work on the mill, in making the mill?

A. No sir, I never did.

Q. You never worked at that?

A. I never done any work on it.

465 Q. I understand you to say that this property has been better known ever since you have known it as the Powell grant than as the Rodriguez grant?

A. Of course, after he come here in possession of it, it was.

Q. What was it known as before his possession of it?

A. Well, it was known for a little while as the Mills property. A man by the name of Mills bought it at tax sale, and that was the way Mr. Powell came in possession of it, Mills traded it to him.

Q. About how long after you moved here was that mill built there?

A. Oh, I had been here—oh, several years, I don't recollect just how many, before he done any work on there, probably five or six or seven years, somewhere along there; I couldn't say just how long now.

Q. Your recollection is not clear as to that?

A. No, not on dates, it is not.

Q. Are you certain that no other parties occupied this land except such as occupied them under the Powells, all the time he had the land?

A. No, not to my knowledge there wasn't.

Q. You were to the mill frequently, were you?

A. Yes, I was there, first and last, a number of times.

Q. Has there been any other mill in this locality, a regular mill with stationary fixtures, other than a few temporary steam mills, than that one?

A. No sir.

Q. How large a mill was this, if you recollect the size of the buildings there?

A. What? That Mr. Powell put up?

Q. Yes, that Mr. Powell put up.

A. Oh, I don't recollect, a good sized house though, large enough to do all of their sawing under the roof, and run the carriage and all the machinery, and he has a grist mill there, and a gin mill, for a while, a good sized house, I don't

466 know how many feet, probably fifty or sixty feet long, and maybe twenty-five or thirty wide.

Q. Do you remember the dam there, how it was constructed, or anything about it?

A. Why, yes, there was a dam about a hundred or a hundred and fifty yards long, all built of dirt.

Q. Was this building a one or two-story building?

A. One.

Q. Where was the ginning done?

A. It was done under the roof of that building, in a little room put up in it under the roof, under the roof in that building for that purpose.

Q. Did you have any cotton ginned there?

A. Yes, I did, one little crop.

Q. Did you have any grist ground there?

A. Yes sir.

Q. Is it not a fact that that was the general and the only place in this vicinity that that work was done during those years?

A. That was the only place, yes, at that time.

Q. State whether that mill was run after the Powells went away, or not, to your recollection?

A. Mr. Slade run it a while after the Powells left.

Q. He lived on the property at the time?

A. No, he didn't live right on the property, he lived just across the line on the west boundary of it.

Q. He had a homestead, did he, there?

A. Yes, he had a homestead there.

Q. Did anyone else ever run that mill to your knowledge?

A. No sir, not to my knowledge. It might have been that one or two was allowed to go there and saw just a little bill of lumber for their own use; there might have been something of that sort.

Q. You know L. J. Owens, do you?

A. Yes sir.

467 Q. Do you recollect whether he ran that mill for any period at all?

A. Well, if he did it wasn't long; I won't be positive about his running the mill; it rather strikes me that he did saw a little lumber there too. It strikes me that a man by the name of Thompson cut a little lumber there, just for his own use, too.

Q. Under whom did they operate this mill, to your knowledge?

A. Well, under Slade, I reckon.

Q. While Slade was there?

A. Yes, I rather think so. And if Owens cut lumber there he may possibly have cut it under Mr. Powell, or while he was in care of it.

Q. Who did you say came into control of that property after the Powells?

A. Oh, Mr. Sanford did.

Q. Do you recollect what was done with it after Sanford got through with it?

A. No, I don't know what they done with it, and further than I have just heard other people talk.

(The direct examination was here concluded.)

And complainants move to strike the testimony of this witness, on the ground that same is hearsay and immaterial and irrelevant.

Cross-Examined.

By Mr. Jones:

Q. Mr. Royal, how long did you say you have lived here?

A. I come here in December of '60, 1860.

Q. You have been living at this place all the time?

A. No, I settled at a place about three miles east of here, and lived there a few years, then it [1] settled at this place.

Q. Your testimony in regard to this grant which you have given is largely from what people have told you, is it not?

A. Well, yes, some of it is. Anything I have spoken positive of there is what come under my own knowledge.

468

Q. I believe you stated that the improvements made by Lassiter and Powell, Junior, were small?

A. Small, yes, just potatoes and little garden spots.

Q. There never has been any fencing on this whole grant, has there?

A. No sir.

Q. You said that no one else ever made any claim—

A. (Interrupting) Well, Mr. Smith, of Eustis, Charlie Smith, he claimed to buy up part of the grant there, I don't know just how many acres, and put out a grove there on it, Mr. Smith did, Charlie Smith.

Q. Mightn't other people have made some claim to this grant and you have not known it?

A. I couldn't say now.

Q. You were not handling the Powells' business, were you?

A. No sir.

Q. The mill eventually went down, didn't it?

A. Yes sir.

Q. And the mill dam went down?

A. No, the dam is standing there, today, a good dam.

Q. The mill went down?

A. Yes, in fact it burned down.

Q. No grinding has been done there since the mill burned?

A. No sir, nothing has been done with it since it burned.

Q. Of your own knowledge you don't know whether Lawrence Owens ran that mill, or who he ran it for?

A. No, I couldn't say. It rather strikes me that he did, though, for a while, but I couldn't say positively.

Q. Of your own knowledge you don't know, do you?

A. No. It seems, though, to me that he did do a little sawing there for a while, but I don't know whether it was one day, ten or fifty days. I couldn't say. I couldn't say he run it that long, if he did run it.

469 Re-Direct Examination.

By Mr. Haskell:

Q. On your cross-examination you mentioned that one Smith cultivated a part of this grant. State whether or not that is the property that is known as the Smith & Clifford, or Pendleton property.

A. Yes, that is it, yes sir.

Q. Do you know who Smith bought this property from, who he got it from?

Mr. Jones:

Of your own knowledge, Mr. Royal.

A. Well, no, I couldn't say as to that, for I don't know.

Q. How large a place was this Smith & Clifford grove?

A. Oh, there was six or eight acres of it, or thereabout.

Q. A pretty fair sort of a grove?

A. Yes, pretty fair, a nice grove.

Q. Wasn't it a fact generally known in the neighborhood that Smith purchased this property from the Powells?

A. I think he did.

To which question complainants object, and move to strike the answer thereto, on the ground that the question seeks to elicit purely hearsay evidence, and the same is irrelevant and not pertinent to any issue in the case, and upon the further ground that the testimony sought is not the best evidence.

Defendant here offered to be filed in evidence the original deed from Robert C. Partin, tax collector, to William Mills, dated April 23rd, 1872, purporting to be recorded in Book A of Miscellaneous Records, Orange County, Florida, Pages 310-311.

To the introduction of which paper complainants object, on the ground that the signatures of the said deed are not properly proven, and that the said paper is made by Robert C. Partin, tax collector of Orange County, Florida, and
470 that the same was made without any warrant of law, and is ineffectual as a conveyance of land, and that the said paper is immaterial and not a proper paper as a matter of evidence to prove title.

Whereupon the said deed was filed in evidence as Defendant's Exhibit No. 4, and is hereto attached and made a part of this report.

Defendant also offers in evidence the original deed from William Mills and wife to George C. Powell, dated May 3rd, 1872, filed for record October 14th, 1872, in the office of the clerk of the Circuit Court of Orange County, Florida, and recorded on [in] Book A, Miscellaneous Records, on pages 312-313 et seq.

To the introduction of which paper in evidence complainants object, on the ground that the signatures thereto are not properly proven, that the said alleged deed is based upon an illegal and insufficient and ineffectual deed, to-wit, the alleged deed of said Partin to the grantors herein, said deed having

been issued by said Partin as tax collector in pursuance of an alleged tax sale, the same being ineffectual in law; and for the further reason that the paper sought to be introduced is not entitled to record, the same not bearing the seal of any officer authorized by law to take acknowledgements.

And thereupon the said paper was filed in evidence as Defendant's Exhibit No. 5, and is hereto attached and made a part of this report.

Defendants also offer in evidence deed from George C. Powell and wife to H. S. Sanford, dated October 27th, 1881, filed for record in the clerk's office of Orange County, Florida, Feb. 2, 1884, and recorded in Book Y, page 962, as being a conveyance of all of the land in controversy, except 640 acres thereof specifically excepted.

471 To the introduction of which paper complainants object, on the ground that the same shows upon the face of it interlineations of description which are not in the same handwriting as the body of the instrument, and upon the further ground that the said alleged deed is based upon a prior illegal and ineffectual [ineffectual] deed, to-wit, the deed purporting to have been made by Robert C. Partin, tax collector, in pursuance of an alleged sale for taxes, without warrant, the said deed being made without warrant of law. And upon further ground that the deed here sought to be introduced is not notice, not having been acknowledged according to law no seal having been annexed to the said deed by the person purporting to take the acknowledgment to same, signing himself as a justice of the peace, and that the signatures to the said deed are not properly proven.

Whereupon the said paper was filed as Defendant's Exhibit No. 6, and is hereto atached and made a part of this report.

Defendant also offers in evidence deed from George W. Powell and wife to Henry S. Sanford, dated November 15th, 1881, filed for record in the office of the clerk of the Circuit Court of Orange County, Florida, February 2nd, 1884, recorded in Book 7 on page 276, as being a conveyance of all of the

land excepted in the previous deed, except 60 acres to Smith and Clifford.

Q. To the introduction of which paper in evidence complainants object, on the ground that the signatures thereto are not properly proven; second, that the said deed is a link in an alleged chain based upon an illegal and ineffectual deed, to-wit, an alleged deed from R. C. Partin, tax collector, made pursuant to an alleged tax sale made without warrant of law; third, that said deed is ineffectual as notice, because the alleged acknowledgement of the said deed bears to the signature of the officer taking the same no official seal as required
472 by law; and for other reasons apparent upon the face of the said paper.

Whereupon the said paper was filed in evidence as Defendant's Exhibit No. 7, and is hereto attached and made a part of this report.

Defendant also offers to be filed in evidence the original tax sale deed from the State of Florida, by the clerk of the Circuit Court of Orange County, Florida, dated January 25th, 1882, to Henry S. Sanford, the same having been filed for record in the office of the clerk of the Circuit Court of Orange County, Florida, January 25th, 1882, and recorded in Book 1, Record of Tax Sale Deeds, on pages 126, 127 and 128.

To the introduction of which evidence complainants object, on the ground that the signatures thereto are not properly proven, that the same is ineffectual as a matter of notice and conveyance, the person purporting to take the acknowledgement thereto not having validated the same by any official seal; and upon the further ground that the said deed is illegal, immaterial and irrelevant, the same purporting to convey lands not taxable at the time the said alleged tax was levied upon the lands, and the said deed not being based upon any valid sale of the lands, and was ineffectual as a conveyance of said lands at the time when the alleged tax was levied, the said lands being lands of the United States Government not segregated from the public domain.

Whereupon the said paper was filed in evidence as Defend-

ant's Exhibit No. 8, and is hereto attached and made a part of this report.

473 And thereupon the said Master, together with counsel above named, on the same day, proceeded to the house of one Ben Anderson, at Cassia, Florida, and there the following testimony was taken:

One BEN ANDERSON being duly sworn as a witness for the defendant, testified as follows:

Direct Examination.

By Mr. Haskell:

Q. What is your name?

A. Ben Anderson.

Q. How long have you lived here?

A. Well, I was raised and born here.

Q. At Cassia?

A. Yes sir, here at Cassia.

Q. How old are you?

A. I am now forty-five years old.

Q. How long have you known the premises known as the Rodriguez grant, sometimes called the Powell grant, designated on the United States surveys of the public lands as Section 37, Township 19, south of Range 28 East, and Section 41, in Township 19, south of Range 29 East, comprising a tract of land of 5,486.46 acres, or thereabouts, here in Lake County?

A. Yes sir, that's right, it was called the Powell grant. I couldn't say exactly the number of years I have known it, I don't know just exactly how many years I have known it, ever since I was large enough to know or have any remembrance. When I first heard of it it was the Powell grant.

Q. Who was on this property the first that you knew of it?

A. The first owner of it? The man that bought it and stayed on it?

Counsel:

Yes.

A. The first one that stayed on it, that I remember of, was

a man by the name of Ed Thomas. That is the first remembrance I have of any man staying on it.

Q. You have been on this property frequently?

A. On the grant?

Counsel:

Yes.

A. Well, yes sir, more or less, every little while I have been on it and around and about where it is.

474 Q. Do you know Mr. Frederick H. Rand, of Sanford?

A. Well, I am not personally acquainted with him. My brother, you know, he knows him better than I do. My brother was the head of the business, and I just know his name.

Q. What do you mean by your brother being at the head of the business?

A. You know, the cedar business. My brother, you know, he was the one that was at the head of it and running it. He attended to the biggest portion of the business.

Q. Did you ever purchase any timber off of this land yourself?

A. Off of the grant?

Counsel:

Yes.

A. No sir, I never did. All we ever got, we got it from Mr. Rand.

Q. What did you get from Mr. Rand?

A. The amount we got?

Q. What was it you got from Mr. Rand?

A. Cedar.

Q. Cedar timber?

A. Yes sir, cedar timber only.

Q. Then you did get cedar timber off this grant?

A. Yes sir, we got cedar timber off the grant, cedar only.

Q. Well, go on.

A. Now, let's see—I could tell—you see my brother knows better about that.

Q. Never mind about that, give the best of your knowledge.

A. Now as near as I can tell you, to my remembrance, without the papers what my brother has got, as near as I can tell you, it has been about fourteen years.

Q. Fourteen years ago?

A. Yes sir, something about fourteen years ago.

Q. Who was on the property then?

A. John Wofford.

Q. It was when John Wofford was on this property that you got this cedar?

A. Yes sir, John Wofford was on the property.

475 Q. How much cedar did you get at that time, you and your brother together?

A. Well, I don't know, sir, just exactly how much we got. My brother has the papers.

Q. Well, give the best you know.

A. Well, he has got the papers. If I saw them I could say. I couldn't know just exactly how much it was and be positive.

Q. Did you cut any cedar timber from the grant?

A. Well, yes sir, we cut a right smart, but then, you know, it had been cut out when it was just small timber. All the best had been cut out. This we got didn't amount to a great deal, just sorry stuff, what you might call third class and second class. All the best had been cut over.

Q. How long were you and your brother operating there, cutting this timber, how long a time?

A. Well, we would just cut at times, you know. Sometimes we would be there, you know, like you'd say we would start out now, we would be there about four or five weeks, or something like that, and then we would stop a while, you know, and they would be back cutting again. All put together, why, I don't think we cut, all summed up and put together like it ought to be, why, it wouldn't amount to not over two months, or something of the kind.

Q. Two months?

A. Yes sir, not more than that.

Q. How long a period was this from the time you first went there until you quit, how long a time from the time you first went on to cut this cedar until you quit cutting?

A. Well, let's see—as near as my remembrance is, if I ain't wrong in my memory, we started in the fall like, I think

it was in the fall when we first started, and then if I ain't mistaken we closed somewhere along in the summer.

Q. The next summer?

A. Yes sir, as near as I can remember without any papers.

Q. Where did you get this timber from, what
476 parts of the grant?

A. We got some of it, I think, near on the east end of the grant, and the balance was about what you might call the middle of the grant, about the middle.

Q. Was that cedar scattered generally over the grant?

A. Well, yes sir, it was pretty scattering, you know. It had been picked out so and cut over until it was pretty scattering.

Q. Did you cut any off the west end?

A. No sir, we didn't get any off the west end, there wasn't any on that end, no sir.

Q. State whether you, or your brother to your knowledge, cut cabbage boots—is that what they call them?

A. Yes sir, that's right, cabbage boots.

Q. Off of this grant?

A. Yes, my brother, he was the man that was running that, by himself, and he cut just across that double bridge there, that is on the east line of it, and he cut a good many around in there on that east line of the grant there; and then he cut the balance, as near as my remembrance is, on the west line, out near the west line of the grant.

Q. When was this?

A. As near as my remembrance is, I think it was now about what you might say about ten years ago.

Q. About ten years ago?

A. Yes sir, I think it was, as well as I can remember, I think it was somewhere about ten years ago.

Q. Have you ever done any other work on that grant property?

A. No sir, that's about all I ever done, them two, that's all I ever done on the grant.

Cross-Examined.

By Mr. Jones:

Q. Do you know where the lines of this grant are?

A. Yes sir, I know where the east line is, I know just ex-

actly where that is; and this here north line, I can
477 show you pretty well right where it is too, and the lines on the south and west. I can show any man nearly all the lines, along where they were.

Q. You say you cut cedar off the west line of this grant?

A. No sir, that was cabbages.

Q. I mean cabbages.

A. Yes sir, cabbages on the west line.

Q. You know Mr. J. P. Owens?

A. Mr. J. P. Owens?

Counsel:

Yes.

A. Yes sir, I know him.

Q. Didn't he stop you from cutting cedar or cabbages on this grant at one time?

A. Well, no sir, he didn't exactly stop us, to tell it straight, no sir, he didn't exactly stop us from cutting.

Q. Did he not order you to stop?

A. Did he not order us to stop?

Counsel:

Yes.

A. Well, he was talking something about stopping us, or something of the kind, but he never did put on no attachment nor nothing to stop us at all.

Q. He never took what you were cutting?

A. No sir, he never did take what we were cutting; he was talking about it, but he never did try to do it.

Q. You say you all cut some cedar. Did it amount to more than about two months work, all put together?

A. No sir, it wouldn't have amounted to anything over that.

Q. And that was how long ago?

A. That has been now—as near as my memory is, it has been now about fourteen years ago.

Q. How do you fix that date?

A. Fourteen years ago?

Q. Yes, how do you fix that date?

A. The date?

Q. What makes you say it was fourteen years ago? How do you fix the date?

A. That is as near as I can remember, it was about fourteen years ago.

Q. Who have you been talking to about this lately?

A. About this grant?

478 Q. Yes. Has Mr. L. J. Owens been talking to you lately about this grant?

A. Mr. L. J. Owens? Which one is that?

Counsel:

Lawrence Owens.

A. L. J. Owens—let's see—he was up here in June.

Q. And you and he had a talk about the grant then?

A. Yes sir. He was here twice or three times. And I think, if I ain't mistaken, now, we was talking about several different things, now. We were old acquaintances; he was brought up right here, and we were all old acquaintances. And he told me he would see me again before he left, and he got away and never did see me any more.

Q. You say you cut first in the fall, and it ran over into the next winter—the next summer?

A. Yes sir, we cut in the fall, as near as I can remember we commenced in the fall, and as near as my memory is we ended up the next summer.

Q. And had the cedar been pretty well cut off before then?

A. Yes sir, the cedar had been cut over wonderful. This we got was small little old stuff, what you might call third class and second class, hardly ever we got one which you might call first class, hardly.

Q. Do you know who had been through there cutting?

A. Well, a lot of it you know, was cut years ago. There was a fellow by the name of Bill White. You know he is dead now; he died up here at Moss Bluff. He cut out—why, gracious!—he cut piles of it. He was in there a year or so, and camped right above, right west of the double bridges, had a regular camp. He went to go right through the swamp, and he just stayed up and down through here and cut wonderful. And the first man that I knew that cut there was named Tumbling. I was a little boy, not more than that high, (indicating), then, yes sir. And then the next man, (and I remem-

ber I was quite a little boy then), was this fellow by
479 the name of Bill White, yes sir, he cut there then.
Well, you know that cutting off of there, that second cutting, left mighty little that was much fit for anything. At first they got what you might call all of the best.

Q. They seemed to have just come in and cut it all over?

A. Yes sir, that's right, yes sir, that's right.

Q. A good many people got cabbage boots off that property too, didn't they?

A. Off the grant?

Counsel:

Yes.

A. No sir, I don't—

Q. (Interrupting) When that fibre factory in Sanford started up didn't a whole lot of people come out here and help themselves to boots and cabbages all through this country, all through this property?

A. Yes, they cut, but I don't think they cut on the grant.

Q. You are not sure of that, are you?

A. Well, I'll tell you, sir, some fellows did cut; I don't know who the men were, but I saw them cutting. They were some men from over at Sanford. You know, as you come down to the Double Bridges over here, coming in off over east there lays a big swamp. Whoever it was cut there done a lot of cutting in there. That is off of the grant.

Q. That is where Mr. John Wafford did his cutting too?

A. On the grant?

Q. Where you were speaking of.

A. He went over there (pointing).

Q. Ain't that where Mr. John Wafford was doing some cutting too?

A. No sir, I don't think he cut in there. If he did I don't know anything about it, if he cut over there, but he cut some, you know, for my brother, when my brother was cutting on the grant, John Wofford cut some for him, with him.

480 Re-Direct Examination.

By Mr. Haskell:

Q. Is it not a fact that this man White, who had done the

big amount of cutting there, cut all over this grant, all the cedar that was fit to cut at the time?

A. Yes sir, as far as I know he cut at that time, when he cut, I think he got all that would do at that time, yes sir.

Q. State where he got this timber, from what parts of the grant?

A. Well, he got lots of it all on this north line, lots of it along on this north line. And he got quite a bit over in what you might call the southeast corner, over that way.

Q. Did he take any off the west end?

A. No sir, he didn't, not on the west end. But he got quite a lot, I know, on the southeast corner, all along there, yes sir, he got quite a lot in there, and he got some mighty fine timber.

Q. Was there much cedar timber on the west line?

A. Well, no sir, the west line, it somehow or other never did afford much cedar; there used to be a little up through there, but not a great sight.

Q. Who got that?

A. That on the west?

Counsel:

Yes.

A. Let's see—I think this fellow who first cut, by the name of Tumbling, he cut all through up in that way.

Q. There was cedar then, all over the grant?

A. Yes sir, more or less, you would find it scattered all over.

Q. Scattered all over?

A. Yes sir, you would find it more or less scattered all over that line.

Q. It has all been cut off, has it?

A. Well, you will find some scattered about there yet, small little trees, you know, that ain't growed up to large trees yet.

481 Re-Cross Examination.

By Mr. Jones:

Q. You say your brother cut some cabbage boots about ten years ago?

A. Yes sir, as near as my remembrance is I think you will find it to be about that time, about ten years.

Q. That was shortly after he had been cutting cedar?

A. Yes sir, that was the difference in fourteen and ten, you know.

The taking of testimony was here continued by agreement to August 9th, to be resumed at Palatka, Florida on that date.

And on August 9th, 1909, at 3:30 o'clock P. M., the taking of testimony in said cause was resumed, pursuant to said agreement at the offices of the defendant, the Wilson Cypress Company, at Palatka, Florida, there being present J. H. Jones, Esq., of counsel for the complainants, E. E. Haskell, Esq., and J. C. Cooper, Esq., of counsel for the defendant, and the said Special Master.

And thereupon the following testimony was taken:

One F. H. WILSON was duly sworn as a witness for the defendant and testified as follows:

Direct Examination.

By Mr. Haskell:

Q. State your name?

A. F. H. Wilson?

Q. Your age and residence?

A. Thirty-seven, Palatka, Florida.

Q. State what official position, if any, you hold with the Wilson Cypress Company and since when?

A. I am secretary and assistant treasurer. I couldn't tell just since when I have been secretary, fourteen or fifteen years.

Q. Do you know the property generally called
482 the Powell or Rodriguez Grant, designated as Section 37, Township 19, Range 28, and Section 41, Township 19, Range 29, in Lake County, Florida, the property involved in this suit?

A. Yes, sir; I am acquainted with it.

Q. Have you ever been on the property, yourself?

A. Yes, sir.

Q. When did you go on it?

A. In the winter of 1906.

Q. What agents has the Wilson Cypress Company had upon and in charge of this property?

A. Why, L. J. Owens was on the property for possibly two years, and J. W. Boykin has been on it ever since, in charge of it ever since, right up to the present.

Q. Is it not a fact that Mr. L. J. Owens has had sort of general supervision over that property ever since?

A. Why, yes, he has. He has been sort of general supervisor of all our lands in that vicinity, and more particularly, I guess, over this, in connection with Mr. Boykin.

Q. Who does your company send its orders through for the case [care] of the property, and directions as to the management of it?

A. Why, we write direct to Boykin for anything we want done.

Q. Direct to Boykin?

A. Yes; but Mr. Owens looks down that way, generally, three or four times a year, or oftener if anything turns up.

Q. During the time when Owens was in charge himself, alone, to whom were your directions given then?

A. Well, they went direct from the office right to Mr. Owens.

Q. When you went down there in 1906 who did the company have on this land?

A. Boykin was on the land then.

Q. Did you see him on there?

A. Yes, sir; I saw him there.

Q. State whether or not the company has expended money for this care and supervision, or having these parties live upon and in charge of this property?

483 The Witness:

You mean in the way of paying them.

Complainants object to the above question, on the ground that same is leading and suggests a legal conclusion.

Counsel:

I will change the question this way: state what moneys your company has expended in the care and control of this property, if any, to whom paid and what amounts?

A. (Referring to memoranda). We paid to L. J. Owens

for staying on grant, $160.00, and to J. W. Boykins, $780.00.

Q. That is up to when?

To the last two questions complainants object, on the ground that it is immaterial and irrelevant what the company has paid Boykin or Owens, that same is not germain in any way to the issues in this case.

A. (To the last question). That is up to July 1st, 1909.

Q. During what period of time has this expenditure been made?

Same objection as above.

A. From May, 1900, up to the present time.

Q. You have somebody on it then, at the present time, under pay?

A. Yes, sir.

Q. Who is it?

A. Mr. Boykin.

Q. Please state what expenditures your company has made on account of this property since May, 1900, exclusive of court costs and counsel fees for litigation.

To which question complainants object, on the ground that same is immaterial and irrelevant.

To which question complainants object, on the ground that same is immaterial and irrelevant.

A. Well, I have a list here of the expenses, just as we have them charged up on our land account. (Producing and referring to paper). That, of course, starts with the original cost.

Q. Call it all off?

484 A. (Referring to list above mentioned):

May 8th, 1900, paid for deed, $9005.00.
May 12th, recording deed, $1.40.
July 26th, St. Clair-Abrams, $52.50.
February 4th, 1901, Haskell, Expenses, $10.00.

February 8th, 1901, Costs of care, Wilson Cypress Company, Rodriguez Grant, $22.77.
Same date, E. E. Haskell, Expense bill, $262.75.
February 25th, Abstract papers, $29.35.
November 3rd, 1902, Shingles, $3.00.
February 13th, 1903, Lumber, $7.43.

Q. (Interrupting). What were those used for?
A. For a small building on the grant.
Q. What?
A. A small shanty.
Q. Now continue?
A. (To former question, continued):

July 22nd, 1903, Cooper & Cooper, $300.00.

Counsel:
I don't want the legal costs. I said, exclusive of that.

The Witness:
You don't care for anything in connection with the legal expense?

Counsel:
No.

A. (Continued). Well, then, the next item would be L. J. Owens for staying on grant from May, 1900, to January, 1903, $160.00.

And J. W. Boykin, from February, 1903, to July 1st, 1909, inclusive, $780.00.

Complainants move to strike the above answer, on the ground that the evidence is not the best evidence.

485 Q. Please state who has paid the taxes on this property since and including the year 1900, up to the present time?
A. The Wilson Cypress Company.
Q. Please take the tax receipts now handed you (handing witness tax receipts) and state what the company has paid for

taxes upon this property, year by year, and state it to the master as shown by these tax receipts?

A. (Referring to receipts). For 1900, $100.50; 1901, $93.80; 1902, $97.15; 1903, $100.50; 1904, $100.50; 1905, $156.00; 1906, $156.00; 1907, $168.00, and 1908, $176.00.

Q. Who paid these several amounts that you have stated?

A. They were paid by the Wilson Cypress Company's checks, sent to the collector.

Mr. Jones:

I object to this evidence, on the ground that it is immaterial and irrelevant, and not the proper way to show possession.

Q. If you have those tax receipts, please produce them. If your company has these tax receipts, please produce them?

A. Here they are. (Handing to the Master tax receipts for the above mentioned years).

By Mr. Haskell:

Now, Mr. Jones, of course, there are a multitude of other lands connected with those receipts, which we may have occasion to use in connection with other matters. As I understand, we made the same agreement as in the other case with regard to the receipts, Mr. Rand had.

Mr. Jones:

Counsel for the complainants interpose the same objection to these receipts as heretofore interposed to the tax receipts presented by the witness, F. H. Rand, but agrees to the production of the receipts before the master, their being copied on the record and withdrawn, as a matter of convenience to the defendant, under the same stipulations as agreed when certain receipts were presented by the witness, F. H. Rand, subject, however, to all legal objections which might be made to the introduction of the originals.

486 (The said agreement being that the master should copy said receipts, only insofar as they apply to the land in controversy, into the record).

Which is here done, as follows: (It being at this time agreed between counsel that said copy might be made by having the witness call over the entries on said receipts to the master.

while they are being taken down, and this copy being made in that way).

For 1900, All Teresa Rodriguez Grant except 60 acres to Pendleton, total $100.50.

1901, All Teresa Rodriguez grant except 60 acres to Pendleton, $93.80.

1902, All Teresa Rodriguez Grant except 60 acres to the estate of W. H. Pendleton, $97.15.

1903, All Teresa Rodriguez Grant except 60 acres to Pendleton, $100.50.

1904, All Teresa Rodriguez Grant except 60 acres to Pendleton, $100.50.

1905, All Teresa Rodriguez Grant except 60 acres to Pendleton, $156.00.

1906, All Teresa Rodriguez Grant except 60 acres to Pendleton, $156.00.

1907, All Teresa Rodriguez Grant except 60 acres to Pendleton, $168.00.

1908, All Teresa Rodriguez Grant, less 60 acres to Pendleton, $176.00.

Q. How long has this Wilson Cypres Company been in business here?

A. In 1894, the Wilson Cypress Company was organized. It was the Tilghman Wilson Company before that.

Q. Is it not a fact that that was simply a change
487 of the corporate name?

A. Well, Tilghman went out of the company at that time.

Q. How long has it been since the two companies have operated, since they first operated, in the milling of timber and cypress lands and the manufacture of cypress lumber in Florida?

A. Well, Mr. H. S. Wilson commenced buying timber in 1889.

Q. How long have these plants been operating, that is, the Tilghman Wilson Company and the Wilson Cypress Company?

A Well, the Tilghman Wilson Company was organized in 1881, I think it was, and ran until April, 1894, when the Wilson Cypress Company took hold of their business.

Q. Where did they operate these plants?

A. Right here.

Q. This same location?

A. This same location; yes, sir.

Q. You mean in Palatka, Florida?

A. Yes, sir.

Q. During all this time, did these companies purchase and buy cypress timber and lands?

A. Yes, sir.

Q. Are you, as secretary of this company, familiar with the market prices of cypress stumpage during this period, during the entire period?

A. Yes, sir.

Q. What was the general stumpage rate of cypress timber when the companies first operated?

To which question, and to any examination on this line, complainants object, on the ground that same is immaterial and irrelevant.

A. Well, at that time, I should say twenty-five to fifty cents stumpage was a very fair price. Timber was bought then very largely per acre, but I don't think it figured up over that.

Q. State if there has been any change in the stumpage rates of like timber since then, and if so, what?

488 Same objection as above.

A. Well, what timber has been bought in the last few years has been bought on a very close estimate, and we have paid as high as four dollars stumpage.

Q. In purchasing cypress lands, please state, so that the record may show, the method pursued in the purchase of cypress timber, as to the value.

To which question complainants object, on the ground that same is immaterial and irrelevant, and does not tend to prove any issue of this case.

Counsel:

As a matter of fact, you have suggested that the cypress timber was purchased on close estimates. I want to know

what you mean by that. And please state on the record how these cypress lands are purchased now.

Same objection as above.

A. Well on several occasions that I can recall we have had the timber offered to us, and parties owning it have figured that it would cut so much timber on the land. We would send an estimater on their land and they would go over the land together and agree upon an estimate. That has been done in several cases. In other cases we have sent men on who would simply go through each forty, usually making four trips through a forty or more, I think is necessary, and get a very close estimate on it. And it is figured on so much per thousand stumpage.

Complainants move to strike the above answer on the same grounds stated in above objection.

Q. Do these estimates form the basis of the value of cypress lands, as you purchase them?

A. Yes, sir.

Q. Then without such estimates there is no general market value of cypress lands?

A. Well, I meant by that that we wouldn't dare
489 to buy any tract of land that we hadn't had thoroughly estimated to ascertain whether it contained the timber it was claimed it did.

Complainants object to the last question and move to strike the answer upon same grounds stated in last objection.

Q. Then the stumpage value of cypress lands is determined by the amount of cypress timber upon those lands, and fixes the price?

A. To a very large extent it is.

Q. That is the general market price of cypress timbered lands, isn't it?

A. A small body of timber, of course, wouldn't be worth near as much per thousand stumpage as a larger body available somewhere near a navigable stream.

Q. Now, will you state whether there has been any change

in the relative increase or decrease of cypress timbered lands, as to the value of same?

Same objection as above.

A. When do you mean?

Counsel:
During the period you have already named.

A. Well, I should say there had been an increase of four to five hundred per cent., from an average of fifty cents a thousand to four dollars a thousand.

Complainants move to strike the last answer on same grounds stated in last objection.

Q. During what particular time or at what particular time was this increase manifest, during what particular time was it generally or recently?

A. Well, there has been a much larger increase within the last five years. For a long time stumpage went along at one to two dollars a thousand.

Q. What has it been within the last five years?

A. Well, I should say the average price was at least three dollars, for the last five.

Q. What is the value now?

490 A. Why, we haven't bought any large lots of timber recently. The last we bought was a little over four dollars. That was over a year ago.

Complainants move to strike the foregoing testimony as immaterial and irrelevant.

Q. Is it not a fact that a large part of this increased value of cypress lands has been within especially the last ten years?

A. Yes, sir.

Q. And of those ten years do I understand that within the last five years a large portion of that has been made?

A. Yes; the increase has been greater in the last five years than it was in the first five years.

Q. State whether you have been over this land pretty well or not?

A. Oh, yes, I have been over it pretty well. I have been through it a couple of times.

Q. Have you been in the swamps?

A. I have been in the swamps and around in a boat.

Q. About on the land?

A. Yes, sir.

Q. You have been around the lines pretty well?

A. Well, not particularly, to know I was on the lines; no, sir.

Q. Who was with you at the time?

A. Mr. Rust and Mr. Green and Mr. Owens.

Q. L. J. Owens?

A. Yes, sir.

Q. State whether Owens took you over this property?

A. Yes, sir.

Q. He showed you the property?

A. Yes, sir; he did.

Q. Will you state, of what you saw, what were the relative proportions of pine lands or high lands and that of swamp on the grant?

A. Well, I don't know that I could give a very good answer to that.

Q. Was there considerable swamp there?

491 To which question complainants object, on the ground that same is immaterial and irrelevant.

A. Oh, yes, we went into it in boats. We went the length of the grant in a boat and in four or five different places during that length we would walk back into the swamp on one side and on the other looking into the timber.

Q. Outside of the swamp, is it a fact that there are other portions of the land that are high and dry?

To which question complainants object, on the ground that same is leading.

A. Yes, sir; pine lumber.

Q. State the character of the land in this grant that you saw, outside of the swamp?

A. Well, as I remember it I would say that it is very nice, high, pine land, timbered land.

Q. Suitable for cultivation and living on?

To which question complainants object, on the ground that same is leading.

A. Why, when the timber was removed it would be; yes, sir.

Q. Outside of the cypress timber and the timber in the swamps, what sort of timber was on the balance of the land?

A. Pine.

Q. Did you see any evidence of either cultivation on this pine land or habitation, or having been cultivated?

A. I don't remember seeing any; no, sir.

Q. You said in your testimony that the man, Boykin, was living on this property. Where was he living?

To which question complainants object, on the ground that same is leading, the testimony of the witness not being that the said Boykin was living on the property, in his previous examination.

492 Question withdrawn.

Q. You stated that when you were there on this land you found J. W. Boykin there, the company's agent. State whether Boykin has living on this land or not at this time.

To which question complainants object, on the ground that it calls for a legal conclusion from the witness.

A. As I remember he had a small shack on the eastern end of the grant, on the Black Water, I think, on the banks of the Black Water Creek, and was staying in this camp, and spent a great deal of his time fishing and hunting in through the grant, as I understood him at the time.

Q. What instructions had your company given him as to caring for this property?

To which question complainants object, on the ground that

same is immaterial and irrelevant, and seeks evidence not the best evidence.

A. He was instructed not to allow any trespassing of any kind on the grant.

Complainants move to strike the foregoing answer upon same grounds stated in the above objection.

Q. Were there any other instructions as to the care of it?

Same objection as above.

A. Well, only general instructions of that kind, not to allow any trespassing, and if anything ever happened to advise us at once, that we might take the matter up with him.

Q. Before you went there, who was Boykin in charge of this property for?

To which question complainants object, on the ground that same calls for hearsay testimony, this witness not having qualified himself as to testify to any predecessors.

493 The Witness:
Before my coming there?

Counsel:
Yes.

A. For the Wilson Cypress Company.

Q. It is a fact that you were secretary of this company before your trip there, and have been ever since?

A. Yes, sir.

Cross-Examined.

By Mr. Jones:

Q. You say, Mr. Wilson, that the shanty you alluded to was down on the Black Water?

A. As I remember it; yes, sir.

Q. How large was that shanty?

A. I should say it was about ten by twelve, possibly twelve by fourteen.

Q. Did it have any fence around it?

A. I don't remember any fence.

Q. Did it have any chimney to it?

A. I think it did.

Q. You think it did?

A. I think it did, yes, a tile chimney, as I remember it. I am not sure of that.

Q. It is the same shanty he is using now, isn't it?

A. I believe so.

Q. What time of day were you there?

A. We were there quite early in the morning.

Q. Did he know you were coming?

A. Well, I rather think he did; yes, sir.

Q. What time was that in 1906?

A. March, 1906.

Q. And I believe you stated that you went in a boat up the creek?

A. We went in a boat part way up the creek, as I remember; yes, sir.

Q. You saw no evidence of cultivation on the outside part of the grant, I believe?

A. I don't remember any; no, sir.

Q. Your knowledge of the location of the grant was through the pointing out of Owens, then, wasn't it?

A. Yes, sir.

494 Q. Mr. Rust and Green, were either of them surveyors?

A. Well, yes; Mr. Green was our logging superintendent. He was also a land man and surveyor.

Q. He was not doing any surveying at that time?

A. No, sir.

Q. Do you or do you not know that the Rodriguez heirs have brought suits for this land prior to the present suit?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, the records of said suits being the best evidence.

Counsel:

I'll change the question. Do you not know that the Rodri-

guez heirs brought suit for this land prior to the last ten years during which time you testified that there has been a rise in the price of cypress?

To which question defendant objects, on the ground that same is immaterial and irrelevant and seeks evidence not the best evidence, the record of the suit being the best evidence.

A. Well, no, I know of no suits prior to ten years.

Q. You were not aware of the fact that they did bring suit prior to this ten years period in which you say there has been a rise in the price of cypress?

Same objection as above.

A. No, sir.

Redirect Examination.

By Mr. Haskell:

Q. I believe I understood you to say that you made two visits to this land. When was the other one made?

A. No; I made only one. I never went but once.

495 Defendant here offered in evidence a certified power of attorney from the Florida Land and Colonization Company to Frederic H. Rand, dated October 6th, 1899, recorded in the records of Lake County, in Deed Book Record 35, pages 538 (diagonal 41) in the place of the original heretofore offered in evidence, the said certified copy being offered in substitution for the original heretofore noted on the record as offered by the defendant, and noted as Exhibit No. 2, the stipulation then made as to said substitution being found on page 284 of this report.

To the introduction of which paper, complainants object, on the grounds heretofore stated on page 284, as applicable to the alleged and especially upon the ground that the signatures to the alleged power of attorney are not proven according to law, and that execution of the said paper is not proven according to law, said paper being subject to all objections applicable to the original.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 2, in substitution for the original heretofore offered and noted under that exhibit number, in pursuance of said stipulation.

The witness, F. H. WILSON, was then recalled on behalf of defendant, and further testified as follows:

Direct Examination.

By Mr. Haskell:

Q. Please state, Mr. Wilson, whether your company when it purchased this land received any other original papers than the deed from the Florida Land and Colonization Company?

A. No, sir; I don't remember that they did.

Q. Did the company receive any other originals than the one mentioned?

A. No, sir.

Q. Has the company in its custody or control any
496 of the original papers referring to this grant, other than the deed mentioned or such as may be produced by E. E. Haskell, your attorney, received from Mr. Rand?

To which question complainants object, on the ground that same is leading and calls for a legal conclusion from the witness, and does not tend to show any proper custody of the papers.

A. No, sir.

Q. Mr. Wilson, please state whether your company or any of its officers or agents or employees have in their custody or control or possession the original deed from the trustees of the Florida Land and Colonization Company, by their attorney, Frederic H. Rand, to the Florida Land and Colonization Company, Limited, of England, dated December 2nd, 1899, of record in Lake County in Book 35 of Deeds, page 54?

To which question complainants object, on the ground that same is immaterial and irrelevant, and on further ground that the witness has already answered that his company has received no such documents, and upon the further ground that the

question calls for a legal conclusion on the part of the witness as to the quality of the document inquired of.

A. We have not.

Defendant here offered in evidence certified copy of a deed described in the above question, offered as a conveyance of the property in controversy.

To the introduction of which complainants object, on the ground that the original, if evidence, is the best evidence; and upon the further ground that the said document purports to be a copy of an original purporting to have been made by one Frederic H. Rand under a power of attorney which has not been shown to have been proven as a valid
497 power of attorney, the signatures to the said power of attorney having never been proven according to law, and that the said conveyance under the infirmities of the said alleged power of attorney is ineffectual and illegal and irrelevant.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 9, and is hereto attached and made a part of this report.

Q. State whether your company or its officers, agents or employees has the custody, control or possession of that certain power of attorney, dated April 6th, 1887, from the trustees of the Florida Land and Colonization Company, Limited, to Henry S. Sanford, of record in Lake County in Miscellaneous Record Book No. 1, page 320.

A. No, sir.

Defendants here offered in evidence certified copy of the power of attorney described in the last question.

To the introduction of which paper, complainants object, on the same grounds heretofore interposed to the original power of attorney to Frederick H. Rand; that the signatures to the said power of attorney are not proven according to law, and that the same is immaterial and irrelevant and ineffectual as a link on the conveyance of real estate.

And the said paper was filed in evidence as Defendant's Exhibit No. 10, and is hereto attached and made a part of this report.

Q. Please state whether your company, its officers, agents or employees have in their custody, control or possession, the original power of attorney from H. S. Sanford to Frederic H. Rand, dated April 16th, 1887, of record in Lake County, Florida, in Miscellaneous Record No. 1, page 318.

A. No, sir.

498 Defendant here offered in evidence certified copy of the power of attorney described in the last question.

To the introduction of which, complainants object, on the grounds heretofore interposed to the last paper offered, and upon the further ground that there is an insufficient accounting for the absence of the original of the said power of attorney, and that the said power of attorney is based upon a power of attorney the signatures to which are not properly proven according to law, and the present power of attorney copy of which is offered in evidence is immaterial, irrelevant and ineffectual and illegal as a link in a conveyance of real estate, and upon the further ground that the said paper is a personal and not an official act of the alleged maker of the power.

And the said paper is filed in evidence as Defendant's Exhibit No. 11, and is hereto attached and made a part of this report.

Q. State whether your company, its agents or employees have in their custody, control or possession the original deed, dated October 15th, 1883, from Lawrence P. Hughey and wife to H. S. Sanford, of record in Orange County, Florida, in Deed Book Y, page 964?

A. No, sir.

Defendant here offered in evidence certified copy of the deed last above described.

To the introduction of which paper, complainants object, on

the ground that it does not purport to describe any portion of the property known as the Teresa Rodriguez Grant.

And the said paper was filed in evidence as Defendant's Exhibit No. 12, and is hereto attached and made a part of this report.

Q. State whether your company, its agents or employees have in their custody, control or possession the original deed, dated January 9th, 1884, from Henry S. Sanford and wife to the trustees of the Florida Land and Colonization Company, Limited, recorded in Orange County, Florida, in Deed Book 12, page 400.

A. No, sir.

499 Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that there is no sufficient accounting for the absence of the original of said instrument, and that there is thereon no official seal of the officer purporting to take the acknowledgment, and no official signature of the alleged officer taking the acknowledgment, and that the said paper is not entitled to record in the State of Florida.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 13, and is hereto attached and made a part of this report.

Q. State whether your company, its agents or employees have in their custody, control or possession the original deed, dated May 8th, 1873, from George C. Powell and wife to William P. Lassiter, of Record in Orange County, Florida, in the clerk's office thereof.

A. No, sir.

Defendant offers in evidence certified copy of the deed described in the last question.

To the introduction of which complainants object, on the ground that the said deed is not acknowledged according to law and is not entitled to record, and because the same is not the best evidence.

Whereupon, the said paper was filed in evidence as Defend-

ant's Exhibit No. 14, and is hereto attached and made a part of this report.

Q. State whether your company, its officers, agents or employees have in their custody, control or possession the original deed, dated May 8th, 1873, from George C. Powell and wife to George W. Powell, recorded in the clerk's office of Orange County, Florida?

A. No, sir.

500 Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that the said deed is not acknowledged according to law and is not the best evidence; and because the said deed is based upon an invalid conveyance, to-wit, the alleged original conveyance of R. C. Partin, tax collector, which is void upon its face.

And the said paper was filed in evidence as Defendant's Exhibit No. 15, and is hereto attached and made a part of this report.

Q. State whether your company, its agents, officers or employees have in their custody, control or possession the original deed, dated February 27th, 1877, from George C. Powell and wife to George W. Powell, recorded in the clerk's office of Orange County, Florida?

A. No, sir.

Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that there is no sufficient accounting for the absence of the original, and because the same is based upon an invalid and void deed of R. C. Partin, tax collector.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 16, and is hereto attached and made a part of this report.

Q. State whether your company, its officers, agents or employees have in their custody, control or possession the

original deed, dated August 14th, 1878, from George C. Powell and wife to Charles T. Smith and Guilford D. Clifford, of record in the clerk's office of Orange County, Florida?

A, No, sir.

Defendant here offered in evidence certified copy of the deed described in the last question.

And the said paper was filed in evidence, without
501 objection, as Defendant's Exhibit No. 17, and is hereto attached and made a part of this report.

Q. State whether your company, its officers, agents or employees has in its custody, control or possession the original deed, dated September 24th, 1878, from George C. Powell and wife to William Slade, trustee for Lidia M. Slade, his wife, of record in the clerk's office of Orange County, Florida?

A, No, sir.

Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that the absence of the original is not sufficiently explained, and because the same is not acknowledged and proven according to law.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 18, and is hereto attached and made a part of this report.

Q. State whether your company, its officers, agents or employees has in its custody, control or possession the original mortgage, dated March 14th, 1881, from George W. Powell and wife to William E. Vail of record in the clerk's office of Orange County, Florida?

A, No, sir.

Defendant here offered in evidence certified copy of the mortgage deed described in the last question.

To the introduction of which, complainants object, on the ground that the same is not acknowledged according to law, and because the absence of the original is not sufficiently ac-

counted for, and because in addition to other defects the alleged acknowledgment has no date upon same.

And the said paper was filed in evidence as Defendant's Exhibit No. 19, and is hereto attached and made a part of this report.

502 Q. State whether your company, its officers, agents or employees have in their custody, control or possession the original tax deed, dated April 24th, 1888, from the State of Florida, by T. J. Shine, clerk of the Circuit Court of Orange County, Florida, to J. C. Krejci, of record in the clerk's office of Lake County, Florida, in Book of Tax Deeds, No. 1, page 60?

A. No, sir.

Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that the same was made the clerk of Court of another county than the county in which the land was located at the time of the making of the said deed, and on the other grounds stated in the objections heretofore urged to the other deeds, introduced as noted above.

Whereupon, the said paper was filed in evidence as Defendant's Exhibit No. 20, and is hereto attached and made a part of this report.

Q. State whether your company, its officers, agents or employees have in their custody, control or possession the original tax deed, dated October 2nd, 1888, from the State of Florida, by H. H. Duncan, clerk of the Circuit Court of Lake County, Florida, to the Buffum Loan and Trust Company, recorded in the clerk's office of Lake County, Florida.

A. No, sir.

Defendant here offered in evidence certified copy of the deed described in the last question.

To the introduction of which, complainants object, on the ground that same is immaterial and irrelevant and does not tend to prove any issue of the case, and because there is no sufficient explanation of the absence of the original.

And the said paper was filed in evidence as Defendant's Exhibit No. 21, and is hereto attached and made a part of this report.

Defendant here offered in evidence original deed,
503 dated August 9th, 1880, from George C. Powell and wife to George W. Powell, recorded in Orange County, Florida, in Book R, page 468.

To the introduction of which, complainants object, on the ground that same is not acknowledged according to law, as a matter of notice, and on further ground that it is based upon a void and illegal tax deed, to-wit, the tax deed of R. C. Partin, tax collector.

And the said paper was filed in evidence as Defendant's Exhibit No. 22, and is hereto attached and made a part of this report.

Defendant here offered in evidence original deed, dated June 25th, 1881, from George C. Powell and wife to George W. Powell, duly acknowledged for record.

And the said paper was filed in evidence without objection as Defendant's Exhibit No. 23, and is hereto attached and made a part of this report.

Defendant here offered in evidence original deed, dated November 7th, 1881, from J. L. Bryan, commissioner, to George W. Powell, of record in Orange County, Florida, in Book No. 3, page 174.

To the introduction of which, complainants object, on the ground that same is immaterial and irrelevant.

And the said paper was filed in evidence as Defendant's Exhibit No. 24, and is hereto attached and made a part of this report.

Defendant here offered in evidence original deed, dated July 26th, 1882, from Angeline S. Luster to Henry S. Sanford, of record in Orange County, Florida, in Book 3, page 177.

To the introduction of which paper, complainants object, on the ground that same is immaterial and irrelevant and illegal and not entitled to record; that the same is void upon its face being the act of a married woman without the consent
504 or joinder of her husband, no previous joinder

in conveyance having been shown to have been made by her.

And the said paper was filed in evidence as Defendant's Exhibit No. 25, and is hereto attached and made a part of this report.

Defendant here offered to be filed in evidence original tax sale certificate by the collector of revenue of Orange County, Florida, dated January 8th, 1878, by Nat Poyntz, collector, to the State of Florida, upon the back of which, under date of July 9th, 1881, is an assignment and transfer there of by Hugh A. Corley, commissioner of lands and immigration of the State of Florida, to George C. Powell.

To the introduction of which, complainants object, on the ground that same is immaterial and irrelevant, and purports to be a payment of taxes upon property, the said property described in said paper at that time not being segregated from the public domain, and not being subject to the payment of any taxes.

And the said paper was filed in evidence as Defendant's Exhibit No. 26, and is hereto attached and made a part of this report.

At this point the following stipulation was made by Mr. J. H. Jones, of counsel for the complainants, and agreed to by counsel for defendant, to-wit, that in the absence of leading counsel for the complainants, W. W. Dewhurst, Esq., that counsel for complainants reserve the right to interpose, upon the return of said leading counsel, any further objections to the documentary evidence introduced at this hearing and at the recent hearing at Cassia, Florida.

505 One HENRY B. ANDERSON was then sworn as a witness for the defendant, and testified as follows:

Direct Examination.

By Mr. Haskell:

Q. What is your name, how old are you and where do you reside?

A. My name is Henry B. Anderson. I am forty-six years old; I reside at Sorrento, Florida.

Q. State how far Sorrento is from Cassia?

A. About seven miles.

Q. How long have you lived in and about the neighborhood of Sorrento and Cassia?

A. Why, I was raised in Cassia, up to about seven years ago, and I moved out to Sorrento. Cassia is my real home now. There is where I own land and everything. But I am residing at Sorrento, have been for about seven years.

Q. Do you know the premises and property, the tract of land, known as the Teresa Rodriguez Grant, in the neighborhood of Cassia?

A. Yes, sir.

Q. How long have you known that property?

A. I have known it for at least thirty years, you might say thirty-five. I wasn't big enough to do anything when I knowed it, when I first recollect it.

Q. When you first knew it?

A. Yes, sir.

Q. Did you know the old preacher, Powell?

A. Oh, yes, sir; I knowed him. I used to go to church and hear him preach.

Q. Do you recollect when he moved into the neighborhood there?

A. Yes, sir.

Q. Where did he live?

A. You don't mean right in Cassia? He lived out there at his mill, was his home.

Q. Well, where was his mill located?

A. His mill was located at what is known as Seminole Springs.

Q. What tract of land is Seminole Springs on?

in conveyance having been shown to have been made by her.

And the said paper was filed in evidence as Defendant's Exhibit No. 25, and is hereto attached and made a part of this report.

Defendant here offered to be filed in evidence original tax sale certificate by the collector of revenue of Orange County, Florida, dated January 8th, 1878, by Nat Poyntz, collector, to the State of Florida, upon the back of which, under date of July 9th, 1881, is an assignment and transfer there of by Hugh A. Corley, commissioner of lands and immigration of the State of Florida, to George C. Powell.

To the introduction of which, complainants object, on the ground that same is immaterial and irrelevant, and purports to be a payment of taxes upon property, the said property described in said paper at that time not being segregated from the public domain, and not being subject to the payment of any taxes.

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Q. How long have you lived in and about the neighborhood of Sorrento and Cassia?

A. Why, I was raised in Cassia, up to about seven years ago, and I moved out to Sorrento. Cassia is my real home now. There is where I own land and everything. But I am residing at Sorrento, have been for about seven years.

Q. Do you know the premises and property, the tract of land, known as the Teresa Rodriguez Grant, in the neighborhood of Cassia?

A. Yes, sir.

Q. How long have you known that property?

A. I have known it for at least thirty years, you might say thirty-five. I wasn't big enough to do anything when I knowed it, when I first recollect it.

Q. When you first knew it?

A. Yes, sir.

Q. Did you know the old preacher, Powell?

A. Oh, yes, sir; I knowed him. I used to go to church and hear him preach.

Q. Do you recollect when he moved into the neighborhood there?

A. Yes, sir.

Q. Where did he live?

A. You don't mean right in Cassia? He lived out there at his mill, was his home.

Q. Well, where was his mill located?

A. His mill was located at what is known as Seminole Springs.

Q. What tract of land is Seminole Springs on?

A. On the Powell grant.

Q. What did Powell do when he went on that
506 property there?

A. Well, he built a house; they built houses first, to live in, and then they went to work and put up a mill on it.

Q. What sort of a mill was it?

A. A water-mill, there on that stream, the Seminole Run.

Q. What sort of a mill?

A. A saw-mill, to saw lumber, the pine trees and to grind corn—a grist mill?

Q. Do you recollect whether they ginned cotton there?

A. Yes, sir; they ginned cotton, too.

Q. He had a cotton gin?

A. Yes, sir.

Q. Where did they get the lumber that they made those houses of?

A. I don't know, they must have sawed it out, I reckon, principally. They might have gotten some other lumber to make some little houses to start it with, and then sawed it out. I guess must have been the way they did it.

Q. Now, did they saw lumber at that mill?

A. Yes, sir; they sawed lumber at that mill.

Q. Where did they get the logs from?

A. Why, they cut them off the grant out there.

Q. Did Powell claim any land except this grant, around there?

A. None, that I ever knew of, at all.

Q. Who had house there? You say they had houses. Who do you mean by "they?"

A. Why, the old man built and and his son, George, and his son-in-law, Bill Lassiter.

Q. They all had separate houses, did they?

A. They all had separate houses.

Q. Did they have any clearings around these houses?

A. Why, little small lots, of an acre or two acres, something like that.

Q. Did they have any live stock?

507 A. Yes, sir.

Q. What did they have?

A. Why, they had, I think, some oxen and they had some horses or mules around the place.

Q. How many oxen did they have?

A. They had six oxen.

Q. And some horses or mules?

A. Some horses or mules, I disremember now which it was that the old man and George, his son, had.

Q. Where did those oxen pasture when they weren't being used?

A. Why, when they wasn't being used they went off down on the flatwoods, east of the grant there, on the place, on the grant, on the swamps there.

Q. The feeding there was good?

A. Yes, sir; it was good feeding there.

Q. Was this mill run pretty regularly?

A. Yes, sir; it was run regular there for some six or seven years, they run that mill there.

Q. What became of the lumber they sawed?

A. Why, they sold it all out, through the country in various places. They taken a lot of it to Sanford and carried it off down from Seminole Springs, down the run there.

Q. Where did you say they got their logs from?

A. Off the grant.

Q. What portions of the grant?

A. Why, they got it west and north and northwest. And, well, some south.

Q. Are you pretty well acquainted with the grant?

A. Yes, sir; I am well acquainted with it.

Q. How did you become acquainted with the grant lines of this property?

A. Why, by being in the woods hunting so much; it was right on our hunting grounds. For the last twenty-five years we ain't hardly missed a week being over on that ground, you might say, hunting and fishing together. And we cut cedar there for five or six years, more or less, and that give us a good show. It has been right in our way all the time, to travel over.

Q. Do you know anything about that property
508 ever having been surveyed?

A. Yes, sir.

Q. Who surveyed it?

A. Mr. Beardall, from Sanford.

Q. You recollect his surveying that, do you?

A. Yes, sir.

Q. Do you know where his survey lines run?

A. Pretty well everywhere I can find his lines around that grant.

Q. It is sometimes since that was done, isn't it?

A. Yes, sir; a good while.

Q. How long?

A. Well, at least twenty-five years.

Q. You say Mr. Beardall surveyed it, from Sanford. Do you know who he was employed by?

A. By the Florida Land & Colonization Company.

Q. Were they reputed to be the owners?

A. Yes, sir.

Complainants object to the above question, on the ground that same is leading, and move to strike the answer on the same ground.

Q. Who were reputed to be the owners of this property at that time?

A. At that time the Florida Land & Colonization Company was in possession of it.

Q. What do you mean by "in possession of it?"

A. I mean they were the owners.

Q. Well, what did they do? What sort of ownership did they have? Who did they have on the place, if anybody?

A. They had Ed. Thomas on the place.

Q. Were you acquainted with him, did you know him?

A. Yes, sir; I were acquainted with him.

Q. Did you ever go hunting with him?

A. I never went hunting with him but I have been to his camp and have spent a heap of time around there with him, and have seen him lots of times. And I paid him money, stumpage for the cedar there.

Q. Who claimed ownership of that property just
509 before the Florida Land & Colonization Company?

A. Sanford.

Q. Who was Sanford?

A. That was the name of the man that the town goes by now. The Powells sold out to a man by the name of Sanford.

Q. The Powells sold to Sanford?

A. Yes, sir; a man by the name of Sanford.

Q. Is Henry Sanford, the man whom the City of Sanford is named for, the man you mean?

A. Yes, sir; I guess so. I didn't know any name but "Sanford," that's all the name I knew of.

Q. Did you ever hear him called General Sanford?

A. Yes, sir; I have heard him called that way.

Q. Who else have you known to be on that grant there?

A. I never is known any one else to be on there—oh, yes, this little fellow, John Wofford, he lived on there a long time for the Florida Land & Colonization Company.

Q. Do you know who is there now?

A. Mr. Boykin.

Q. Do you know who he is on there for?

A. For the Wilson Cypress Company now. He is employed by Mr. Owens, I suppose.

Mr. Jones:

Complainants object to the witness stating matters of hearsay, the witness having replied that he "supposes" so, and move to strike his answer.

Q. Have you seen Mr. Boykin on this land?

A. Yes, sir.

Q. Has he got a place there?

A. He has got a house down there at the Drawdy Spring.

Q. Does he stay there?

A. Some of the time he stays there.

Q. Have you seen him down there?

A. Yes, sir; I have seen him down there.

Q. Seen him often?

A. Yes, sir.

510 Complainants object to the last question, on the ground that same is leading, and move to strike the last answer on same ground.

Q. Do you know of Mr. L. J. Owens ever having been in charge of and on this land?

A. Yes, sir.

Q. When was that?

To which question complainants object, on the ground that it involves the answer by the witness of a legal conclusion.

A. That was—I can't remember just exactly, sir, I have no exact record to go by, but it's been about seven or eight years ago, something like that, when he first went to work for the company.

Q. Who followed him?

A. Mr. Boykin, when he left.

Q. Now, do you remember any one else, any other family that lived there besides the two Powells and Lassiter, on this property, especially who ran the mill?

A. Why, there was Mr. Slade, after they quit, Mr. Slade taken it up, a man named William Slade.

Q. Do you know of any one else who ever ran that mill beside him, beside them?

A. No, sir; I don't remember any one else that ever run that mill beside them, that run the mill.

Q. Do you know whether Mr. L. J. Owens ever ran it or not?

A. I don't remember Mr. Owens running it.

Q. He might have done so and you not recollect it?

A. Yes, sir; he might have done so and I not recollect it; a person has so much to think about, sometimes he will forget a thing, but I don't remember it just now.

Q. Did Mr. Slade have a place on there?

A. Well, Mr. Slade, he taken a homestead joining the grant.

Q. He lived on his homestead?

A. He lived just adjoining it, on his homestead.

Q. That was while he was running the mill, too?

511 A. Yes; I think so.

Q. Do you recollect when the Powells went off?

A. Yes; I recollect when they went away.

Q. Who did you say the Powells sold this property to?

A. To Sanford. They had done a lot of trading with him down there; he had a big store; and they got in debt pretty bad and wanted to go away, so they sold their claim to him.

Q. You said something about the cutting of cedar off that land. Now, by whose authority did you cut that cedar off that land?

A. By the Florida Land & Colonization Company's, Mr. F. H. Rand, as agent, was the man that give me the right.

Q. You got a license from him to do the cutting?

A. Yes, sir; I got permission from him to cut it.

Mr. Jones:

I will ask if the permission was in writing or verbal, before we go further.

A. Why, it was in writing at that time.

Mr. Jones:

Complainants object to any testimony along this line, because the writing is the best evidence.

Q. That writing, have you got it, so you can produce it? Is it in your possession?

A. Why, I couldn't say, positively, that it is, because it has been a long time, and it may be I have misplaced it now, but I am satisfied I could find some receipts.

Q. Did you ever see Mr. Rand, personally, and talk about this?

A. Yes, sir; I seen him, personally.

Q. Now, what was the agreement with Mr. Rand?

To which question complainants object, on the ground that the agreement has been stated to be in writing, and the writing is the best evidence.

A. My agreement with him was for me to cut any cedar found on the said grant and pay him ten cents a foot for it, if it was first-class cedar, otherwise, the second and third-class was from seven to five cents.

512 Complainants move to strike the last answer, on the ground that same is not the best evidence.

Q. Did you make payments for the cedar you cut on this land to Mr. Rand for the Florida Land & Colonization Company?

A. Yes, sir.

Complainants object to the last question and move to strike the answer thereto, on grounds stated in last objection.

Q. And on what terms? What were the prices you paid, that you actually paid Mr. Rand for the cedar you cut on there?

A. I paid him ten cents a cubic foot for all cedar that was first-class cedar.

Q. And how much for the second-class?

A. Seven.

Q. And third-class?

A. Five cents.

Q. Where did you get this cedar from?

A. Mostly from the north side of the central part of the grant, was where the bulk of it lay.

Q. Well, where does the cedar grow on that grant, anyway?

A. Well, on the low swamp land.

Q. You know that grant pretty well; how much of that grant is pine land, and land suitable for living on, and how much of it is swamp?

A. There is about one-fourth of it that is high land, suitable for living on.

Q. And the other three-fourths?

A. The other three-fourths is low swamp land.

Q. Now where did you get this cedar from? What sort of lands did you get it off of?

A. On the low swamp land.

Q. Did you get it all in one place?

A. Oh, no, from scattered all over the land. We really got little, you might say, all over it, but the bulk of it was on the north side of the center of the grant.

513

Q. That was where you got the most of it?

A. Yes sir.

Q. You got it where it was, did you?

A. Yes sir, I got it where it was.

Q. How long a time from the time you first began cutting this cedar was it until you quit finally?

A. Well, not less than five years; off and on we worked at it not less than that.

Q. Did your brother help you part of the time?

A. Yes sir, he helped all the time, you might say.

Q. What is your brother's name?

A. Ben Anderson.

Q. You were the one who made the contract, were you?

A. Yes sir, I was the one that made the contract, yes sir.

Q. Your brother worked with you, did he?

A. Yes, me and him worked partners generally.
Q. Worked partners?
A. Yes sir.
Q. What would you say if your brother had said he worked there in all what would be about two months work, that he started in the fall and ended it the next summer? Is that a fact, or what did you actually do?

To which question complainants object, on the ground that it is an attempt to impeach defendant's own witness.

Counsel:
I'll ask another question.

Q. You are positive then, that your brother worked a portion of the time, during a period of five years?
A. Yes sir.
Q. You were the director in the business?
A. Yes sir, I was a director in the business.
Q. And made the agreements?
A. Yes sir.
Q. Who made the settlements and handled the
514 money matters?
A. I did that myself.
Q. Were you the first one that cut the cedar on that land?
A. No sir.
Q. Who cut it, if you know, who else cut on there?
A. Mr. White.
Q. A Mr. White?
A. Yes sir, William White, I believe his name was.
Q. How long was it before you cut the cedar was it that White cut cedar there?
A. Well, it was about—it had been about fourteen years before, I think.
Q. About fourteen years before you cut?
A. Yes sir.
Q. What part of the grant did White cut cedar from?
A. Well, at that time there was cedar growing pretty near all over it, unless it was the very lowest places.
Q. Well, where did he cut it from?
A. Well, you don't mean who he bought it from?
Q. No, what part of the grant he got the cedar from.

A. Why, he got it off the swamp part, and at that time it never had been cut, or if it had been—well, I don't think it had ever been cut; he was about the first one that ever cut any off of it.

Q. You could see the marks where he had cut?

A. Oh, yes sir, I can show you the signs today. And the cedar then was growing all about over it, lots of cedar was on it at that time.

Q. You saw the woods where they had been cutting?

A. Yes sir.

Q. You saw the butts where they had been cut off?

A. Yes sir.

Q. Scattered about all over the swamp?

A. Yes, all over the swamp.

Mr. Jones:

Counsel objects to counsel leading the witness quite so violently.

515 Q. Did you know of anyone else cutting cedar there?

A. Mr. Royal's two sons, Lonnie Royal and Albert Royal, cut on there.

Q. Before you did?

A. Yes sir.

Q. About how long, do you think?

A. About a year; I commenced about a year after they quit. I worked with them at the time they cut on there.

Q. Where did they get theirs from?

A. They cut theirs mostly on the easterly part of the grant, on the north side.

Q. You say about one-fourth of this land is high pine land, suitable for cultivation and dwelling places?

A. Yes sir, about one-fourth.

Q. What part of the grant is that on?

A. It is on the west and northwest, and the southeast corner.

Q. What kind of timber is on that part of the grant?

A. Why, it is nice pine land, pine timber.

Q. Do you know the Pendleton grove?

A. Yes sir, I know where it was, at least.

Q. Who set out that grove in the first place?

A. In the first place Mr. Smith and Clifford set out that grove there, that is, a portion of it.

Q. Who put the original grove there?

A. Why, Mr. Smith and Clifford, I think, but the original grove there—hold just a minute—I may be mistaken—I can't think of the the man's name that bought them out there; there was a man that bought them out, and I can't think of his name just now.

Q. What became of this Powell place, the George Powell place?

A. That was the place that Smith & Clifford bought out there. They bought—I don't know just how many acres they bought there, including that field that is there now.

516 Q. Was there any grove there when Smith and Clifford bought from George Powell?

A. I think there was just only a few trees that George Powell had set out there. They wasn't anything much.

Q. Smith and Clifford then extended the grove?

A. Yes sir, they extended out the grove.

Q. How much of a grove did Smith and Clifford have out there?

A. They had in about ten acres there. But there was another man put out a little there. He bought them out. I can't think of his name.

Q. Well, now, what was Ed Thomas doing on this land? You spoke of Ed Thomas.

A. Why, he always told me he was there to look after it—

Mr. Jones:

Complainants object to any hearsay testimony, as to what Thomas told the witness.

Q. What did Thomas do on this land?

A. Why, he had him a little field there, and raised little crops, about what one man would want to eat, and the like of that.

Q. He actually lived on this property?

A. Yes sir, he actually lived there.

Q. How long did he stay there?

A. He stayed there about four years.

Q. He made his home there, did he?

A. Yes sir, he made his home there.

Mr. Jones:

Complainants object to counsel leading the witness.

Q. What did he do there?

A. He hunted a good deal, he would hunt all over the grant, and of course he would go up and down the lines and around and over it quite often, hunting and looking after it to see if anybody was cutting timber. People were pretty bad about about cutting timber in that country at that
517 time.

Q. Do you know anything about these palmetto or cabbage boots that were cut there?

A. Yes sir, I was the one that cut them, I was foreman at it.

Q. You were foreman there?

A. Yes sir.

Q. When was that?

A. Oh, that was about eight years ago.

Q. About eight years ago?

A. Yes sir.

Q. Who were you cutting there for?

A. I was cutting there for the fibre factory in Sanford.

Q. How long were you at work there?

A. Why, I don't think I was at it more than six months, because my wife was sick and I had to quit. I was there about six months.

Q. Where did you get those, from what part of the grant?

A. I got those from the east part mostly, on the east side and south side.

Q. Where is the line on that east end of the grant?

A. Near those double bridges at Cassia.

Q. Were you ever stopped by anybody, or told to stop cutting either cedar or these boots, or anything of that kind?

A. No sir.

Q. Nobody ever attempted to stop you?

A. Nobody ever attempted to stop me at all.

Q. Who did you settle with for those palmetto boots that you cut?

A. The Florida Land and Colonization Company, with Mr. F. H. Rand, as agent.

Q. You made all settlements with him for it?
A. Yes sir.
Q. It was under his authority that you were there, was it?
A. Yes sir.

Complainants object to the last question and move to strike the answer, on the ground that the question is leading.

518 Q. How came you to go on that land to cut these palmetto boots?

A. Why, they brought good prices, and—I went to call the man's name that run the factory there, but I can't think of it—I went down to see him, and he wanted me to cut boots in there, he said there was mighty nice boots out there, better than there was anywhere in the country. I wasn't doing anything much at the time, and I was always a contractor, doing one thing and another, most all my life. And I made an agreement with him to take them. And then I was [saw] Mr. Rand about it, and went to work.

Q. What did Mr. Rand tell you about it?

To which question complainants object, on the ground that it calls for hearsay testimony.

A. He told me to go and cut them.
Q. You agreed with him on a price, did you?
A. Yes sir.
Q. That is what you settled with him for, for what you cut?
A. That's what I settled with him for.

Complainants move to strike the answers to the last two questions, on the ground that said questions are leading and illegal.

Q. Who did you settle with for them?
A. I settled with Mr. Rand, agent of the Florida Land and Colonization Company.
Q. I believe you said you knew that John Wofford was on the grant there?
A. Yes sir.
Q. What was he doing?

A. Why, he was looking after it for the Florida Land and Colonization Company at the time.

Q. Did he live on it?

A. Yes sir, he lived on it, had him a nice little field. I have been in his field lots of times, and eaten vegetables out of it.

Q. Where was that located?

A. That was away up—well, it was right south
519 of Cassia, where you come to my brother's place, over in the swamp there, on a nice hammock.

Q. About what time did you first go on this property for the cutting of that cedar? Can you state when you first went on there, about how long ago?

A. That was somewhere about eighteen years ago.

Q. And the five years that you talk about was succeeding that?

A. Well, from that down, that is, I commenced somewhere about eighteen years ago.

Q. And was your work going on continuously, all the time?

A. Oh, no sir, not all the time, just along at different times.

Q. At different times during the period of five years?

A. Yes sir, during the period of five years.

Q. You are positive that no one ever stopped you or attempted to stop you from working on this grant at any of these times?

A. No, sir; nobody ever attempted to stop me at all, at any time.

Q. You just continued your work right along?

A. Yes sir, just worked right along.

Q. Do you recollect when White went on the grant to cut cedar?

A. I don't recollect just exactly, I know I was quite a lad at the time, it was somewhere in the neighborhood of thirty or thirty-five years ago.

Q. Who was on that grant at that time, if anybody?

A. There wasn't anybody on it at that time.

Q. Was there anybody on the grant?

A. No sir, not as I know of at all, at that time.

Q. Who was running the mill?

A. Well, they had—when he was working there, cutting that cedar, well, Mr. Slade, I guess, was running the mill dur-

ing the time he was cutting the cedar there—I know Mr. Slade was.

Q. Did I ask you how long White was on there?

520 A. No sir.

Q. How long was White cutting Cedar there?

A. He was there about three years.

Q. There all the time, or just part of the time, during that period?

A. Well, pretty well all the time. He had a lot of work to do. There was a sight of cedar there then.

Q. Did he run a large gang or a small gang?

A. Well, he run from six to seven men mostly.

Q. Choppers?

A. Yes sir, and teamsters.

Q. Where did they carry that cedar to?

A. Well, I don't know, sir, what he did do with it; they run it all out down here to the St. Johns River, was the last I knew what he did with it.

Cross-Examined.

By Mr. Jones:

Q. Where did you say you live now?

A. At Sorrento.

Q. What is the name of your brother?

A. Ben J. Anderson.

Q. Where were you born?

A. At Rock Spring.

Q. And you were raised at Cassia all the time?

A. Pretty well. I come to Cassia a good sized boy, and was raised there ever since.

Q. How old were you when you came to Cassia?

A. Oh, I don't know sir. I don't have any notion of that at all.

Q. And you have lived there ever since except when you have been living in Sorrento?

A. Oh, yes sir. Cassia has always been my home.

Q. Are you married?

A. Not now, my wife died last June a year ago.

Q. How old is your oldest child?

A. About twenty years old.

Q. You say Lassiter had a house on that land?

A. Yes sir.

Q. Whereabouts was Lassiter's house?

A. Well, it was over on the north side of the land.

Q. Where was old man Powell's house?

521 A. Well, he lived right west of the springs, right close by the spring run.

Q. Where was George W. Powell's place?

A. He lived on the east side of the spring run there.

Q. All of those places were on the north side of the run, weren't they?

A. No sir, the old man lived on the west side of the run.

Q. On the west side of the run?

A. Yes sir.

Q. Over there where that house now is?

A. No sir, that house that is over there now is not on the grant, it is just off of it.

Q. Wasn't that the Slade house?

A. Yes sir.

Q. That is not on the grant at all, is it?

A. That ain't on the grant at all.

Q. You testified that the oxen fed east of the house. Did you always drive those oxen to pasture?

A. I didn't do it all the time, but that was their main place of feeding when they was out, every time I would ever see them they would be there.

Q. Ain't there some good grazing land on that hammock back of the Slade place, also?

A. There ain't no hammock back to the Slade place that I have seen.

Q. On the northwest of the Slade place, where that run goes in there?

A. That's so thick in there that oxen or nothing else can't get through in there, except something that can crawl. That's a regular briar patch in there.

Q. Is that the only good place for grazing there?

A. That land on the east side of the swamp there is the best place, the best grazing ground, and if the cattle didn't have but a little time to feed they would make for that as soon as they were turned loose, and those cattle didn't have any too much time to feed. They might have ate a little

522 somewhere else part of the time.

Q. Were you there when Mr. Beardall surveyed that land?

A. Yes sir.

Q. Did you help him survey it?

A. No sir, I didn't help him survey it.

Q. How do you know he was surveying for the Florida Land and Colonization Company, then?

A. Well, Mr. Thomas was helping him, and he was staying on it for them.

Q. How do you know Thomas was staying on it for them?

A. He told me he was, and I seed a whole lot of them when they come up there and stopped, as I was coming from Sorrento, and I talked to them and they told me they were going to put him there to stay, and I seen they did.

Q. You were going by what was told you, then, what you heard?

A. I was going by what they told me, and I seen it work out that way.

Q. That was in regard to Thomas?

A. Yes, I was coming out from Sorrento, and they was all there on this side of the road, there, had just come from Sanford.

Q. Did you hear the Cypress Company employ Mr. Boykin?

A. Well, no sir, I didn't just exactly hear them do it.

Q. Did you see any papers relating to the employment of Boykin?

A. I seen some notices stuck upon some trees around at different places.

Q. Did it say that Mr. Boykin was on the place for the Cypress Company?

A. Well, I couldn't say just what the reading exactly said, but that's what it related to, and all of us would look it over and see that was the result. I don't know just what the reading said, just now, I couldn't say just what it said.

Q. You spoke of a house of Mr. Boylin's. In [Is] that house near the Drawdy Spring?

A. Yes sir, that's where the house was that I was speaking about.

523 Q. You spoke of Mr. L. J. Owens in your testimony. Do you know Mr. Owens?

A. Yes sir.

Q. When did you last see Mr. Owens?

A. Oh, I saw him pass when he went on the place about

two months ago. I never got a chance to speak to him, though.

Q. Didn't Mr. Owens come and see you in the month of June?

A. No sir.

Q. Didn't you see and have a talk with Mr. Owens in the month of June?

A. No, sir; I haven't seen Mr. Owens to have a talk with him for—I don't know the date, it's been a long time since I have seen him and had a talk with him.

Q. You talked over what your evidence would be with Mr. Owens?

A. No sir, Mr. Owens never said a word to me about evidence, in no shape or form.

Q. You are sure, now, that you didn't have a talk with Mr. Owens in the month of June past?

A. No sir, I didn't have a bit of talk with him, because I haven't seen him to speak to him.

Q. He didn't stop out there at Sorrento and see you during one or the other of those months?

A. No sir, he didn't.

Q. Did your brother, Ben, tell you that he had a talk with Mr. Owens in the month of June?

A. No sir, he didn't tell me that at all, because I have just seen my brother once since the first of this year, about four weeks ago—about five weeks ago. I have just seen him about a hour one day.

Q. Didn't you see him last Tuesday?

A. No sir.

Q. Didn't you drive from Sorrento to your brother's last Tuesday?

A. No sir.

Q. You say Mr. Slade followed Mr. Powell in running this mill?

A. Yes sir.

524 Q. What time did the Powells leave there?

A. Oh, just what time I hardly know what time they did leave there. I think it would be hardly worth while for me to try to hunt up a time.

Q. Where did they go?

A. They went off down south somewhere or other.

Q. Did they sell out to Sanford before they went off or after?

A. They sold out before they left, as well as we all understood it, that was the report.

Q. Did you cut any cedar on section nine?

A. On the grant, you mean?

Counsel:

Yes.

A. Why, I don't know as I just understand it by sections.

Q. You don't know anything about the sections in there at all, do you?

A. Why, I never thought it up at all.

Q. And you say you have been traveling over that grant once a week for the last thirty-five years?

A. More or less.

Q. Your cutting there was about eighteen years ago, I believe you said, when you started?

A. Yes sir, it commenced somewhere about eighteen years ago.

Q. Was that about the time you got your authority from Mr. Rand?

A. Yes sir, somewhere in the neighborhood of that time.

Q. I believe you testified that was in writing, didn't you?

A. Yes sir.

Q. If your brother stated that you only cut there during one season he didn't state the fact. [? A.] if he stated that we only cut one season.

Q. You and him cut as partners, didn't you?

A. We cut as partners all the time.

525 Q. What time did you stop cutting there?

A. Oh, at about the end of the five years from the time we began.

Q. Did you see Mr. White cutting any of the cedar on that land?

A. Why, yes, sir. I went through the swamp there several times when I was going with my father. I wasn't big enough to do much then but go along with him, but I would go when my father went. He would fish all through there, and past where they were working.

Q. Do you know Mr. J. P. Owens?

A. Yes sir.

Q. Has Mr. Owens ever had a talk with you about this land, this grant?

A. No, sir; Mr. Owens has never said a word to me in his life about this grant affair.

Q. Were those two Royal boys that you speak of sons of old man Ivey Royal?

A. Yes sir.

Q. And they cut theirs about a year before you did?

A. Yes sir, about a year before I did. I commenced about a year after they quit off. Their mother died since you all was out there.

Q. Well, the place that George Powell has was the place that Smith and Clifford got? Is that right?

A. Yes sir, that's right.

Q. Is that north or south of the creek?

A. That is east of the creek.

Q. East of the creek?

A. Yes sir.

Q. Which one of the Powells was the young man? Are you talking about the young man's place or the old man's place?

A. The young man's place was east of the creek run.

Q. That is the place you are speaking of now?

A. Yes sir.

Q. How far from Cassia station are those double bridges?

A. About a mile.

Q. How far from Cassia is the southeast corner of the grant? In other words, how far up in the grant is the double bridges?

A. Why, it can't be over a quarter of a mile. I
526 am pretty sure it ain't.

Q. You are sure you had no talks with Mr. J. P. Owens about this grant?

A. You mean L. J. Owen's, don't you?

Counsel:

No, I mean J. P. Owens.

A. Why, J. P. Owens hasn't been up in our country for years, that I know of. He lives at St. Petersburg. J. P. Owens, gracious knows when I have seen him.

Q. Well, did you have a talk with him before that time?

A. Well, nothing worth relating. We might have spoke

about it in just a common kind of a way, but if we did we never had no serious talk, in no shape nor form.

Q. You spoke of a field up there that John Wofford had. Was that field on that hammock up there just about half a mile south of your brother's place?

A. Well, this field that I speak about that John Wofford had, it is a good mile right due south of where my brother lives, over in the swamp.

Q. About a mile south of your brother's?

A. Yes, sir; about a mile due south there, but very few people, I expect, ever seen it, more than one or two old settlers there that knows the swamps and everything.

Q. When you stated that Wofford represented the Colonization Company, did you ever see any papers from the company giving him authority over there?

A. I never read any papers, but I seen him write them, make his reports at the end of the month, and so on, like that. And I have seen checks that F. H. Rand as agent would send him.

Q. Did you ever have any business over in that country except attending to this grant business?

A. In the country?

Q. Did you have any other business over there but going around and driving these oxen and attending to this
527 grant business?

A. I don't know as I hardly understand you, about driving the oxen and attending to the grant business. When I was driving the oxen, and so on, I was working for the Royal people; once I was teamster for them and drove oxen. And then I taken it up my own self, and worked, and sometimes I hired somebody.

Q. You have told about all you know about this matter, haven't you, now, Henry?

A. Why, about all that is worth anything, I think.

Re-Direct Examination.

By Mr. Haskell:

Q. They have asked you some questions about J. P. Owens having conversations with you. As a matter of fact, Henry, did J. P. Owens ever stop you from working on this grant at any time?

A. No, sir; he did not.

Q. Or forbid you from doing any work on it, or anything of that kind?

A. He said at one time something in regard to it, but he never come up and said anything about quitting, nor nothing of the kind, but he did say a litle something one time, I forget what it was, but it didn't amount to anything.

Q. Did you stop?

A. Why, no sir, I didn't stop, I worked right on, kept right on working. It wasn't anything to cause me to stop.

Q. He never put you out of there or made you quit your work?

A. No, sir. And in regard to what he did say, why, I just went down and wrote to Mr. Rand about it, and he told me just to go ahead, that whenever he said for me to stop, to stop.

Q. That was all there was to the Owens incident?

A. That was all there was to it.

528 Re-Cross-Examination.

By Mr. Jones:

Q. Who did Mr. Owens say he was representing?

A. I disremember now who he did say he was representing.

Q. And you disremembered having any talk with him at all, just now, didn't you?

A. I said, anything that amounted to anything.

Q. Didn't you say you hadn't seen him for six or seven years, and hadn't had any talk with him?

A. Anything to amount to anything, I said.

Q. In regard to this grant?

A. To amount to anything.

Q. Didn't I ask you if you had had any talk with him in regard to the grant, and you said no?

A. You asked me did I see him in June, and I said no.

Q. No, I asked you that about L. J. Owens.

A. I understood you to say J. P.

Q. Didn't you see L. J. Owens?

A. No, sir; not about this matter.

Q. You didn't have any conversation with L. J. Owens about this testimony in June or July?

A. No sir, I don't remember what time I spoke to him last.

Q. Didn't Mr. J. P. Owens tell you he was representing the Rodriguez heirs, when he talked to you?

A. I don't remember whether he said anything about that or not. I am this way; when I am doing anything, and hear a little rumor of that kind, I always refer to the boss man to hear about it, and that wasn't anything to amount to anything, but I inquired, just in case anything did come up, that I would be on the safe side. It didn't amount to anything.

Q. You and your brother are colored men, ain't you?

A. Yes sir.

Re-Direct Examination.

By Mr. Haskell:

Q. Where did you come from here?

A. From Sorrento here.

529 Q. How far is it from Sorrento to Sanford?

A. It is nineteen miles.

Q. And Sanford is seventy miles from here?

A. Yes sir.

(It is here noted by consent of counsel that this witness is entitled to pay for one day's attendance and eighty-nine miles each way.)

And the hearing was here adjourned, subject to further notice.

530 And on Tuesday, August 24th, 1909, at 9:30 o'clock A. M., pursuant to notice previously given, the taking of testimony in said cause was resumed, at the office of Messrs. Cooper & Cooper, at Jacksonville, Florida; there being present J. H. Jones, Esq., of counsel for complainants; J. G. Cooper, Esq., of counsel for defendant, and the said Special Master.

And thereupon the following evidence was produced:

Defendant offered in evidence a certified copy from the office of the Commissioner of Agriculture of the State of Florida of the field notes of the survey of the Teresa Rodriguez

grant, Section 37, Township 19 South, Range 28 East, and Section 41, Township 19 South, Range 29 East, as surveyed by M. A. Williams in 1851, certified to by the commissioner as the legal custodian of the field notes of the surveys of the United States of public lands in the State of Florida.

To the introduction of which complainants object, on the ground that same is immaterial and irrelevant.

And the said paper was filed in evidence as Defendant's Exhibit No. 27, and is hereto attached and made a part of this report.

Defendant offered in evidence certified copy of a proceeding in the Circuit Court in and for Lake County, Florida, being a proceeding by Wilson Cypress Company, (defendant herein), to perpetuate testimony, the said offer in evidence being of all of said document except that part thereof containing the testimony of the witnesses L. J. Owens, J. W. Wofford, Alonzo Royal, Ivey Royal, Frederic H. Rand, Frank Griggs, William Lassiter and William Slade, witnesses whose testimony has been taken direct by the Master in this case, the testimony remaining and being so offered being that of William Beardall,
531 who, as shown by evidence in the record, was dead prior to the taking of the oral testimony in this case, and the formal parts of said document.

To the introduction of which complainants object, on the ground that the death of the said Beardall has not been sufficiently proven, and on the further ground that said testimony is irrelevant and incompetent, and that the said testimony introduces the legal conclusions of the witness, said last objection relating particularly to interrogatories 3, 4, 5, 6, 7, and 8, and the answers thereto, as calling for the conclusion of the witness and opinion of the witness. And complainant objects specially to the answer of the witness to interrogatory No. 2, on the ground that the same is not the proper method of proving title to lands, and objects upon the same ground to the answer to interrogatory No. 3. And complainants further object to the answer to the 8th interrogatory, because the same is hearsay, in addition to the prior objections; and object to the 9th interrogatory on the same grounds above stated as

to the other interrogatories. And complainants object to all of said testimony on the ground that same is incompetent and illegal and not the proper way to prove title to lands, and that said testimony is based upon hearsay and is not the best evidence, and was not subject to cross-examination.

Whereupon the said document was filed in evidence, except as to parts specially excepted as above stated, as Defendant's Exhibit No. 28, and is hereto attached and made a part of this report.

532 One J. E. INGRAHAM was then called as a witness for the defendant, and being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. Mr. Ingraham, state your name, residence and occupation.

A. James E. Ingraham, St. Augustine, Florida, vice-president, Florida East Coast Railway Company.

Q. What part of the business of the company have you particularly in charge, Mr. Ingraham?

A. Lands, taxes.

Q. The land department?

A. Yes.

Q. Did you ever reside in Sanford, Florida? And if so, during what years?

A. I did, from 1875 to 1892.

Q. Did you know General Henry S. Sanford in his lifetime?

A. I did.

Q. During what years were you acquainted with General Sanford?

A. From the fall of '75 until his death.

Q. Can you give about the date of his death, about the year?

A. I don't remember about the time of his death; it was some time about 1890, I think; I am not positive as to the time of his death.

Q. What business relations, if any, during a part or all or any of this time did you sustain to General Henry S. Sanford?

A. I was first his cashier and bookkeeper, and afterwards his general agent.

Q. At what place?

A. Sanford.

Q. What business was General Sanford engaged in?

A. He had a large general store at Sanford and land business there. He owned the Sanford grant, among other properties, on which the town of Sanford is now located.

Q. During this time was he or not engaged to some extent in buying and selling real estate in that vicinity?

A. Yes.

533 Q. During what time were you in his employ?

A. From March, '75, until the fall of '82.

Q. In October and November of 1881 what were your business relations to General Sanford, and what connection did you have with his properties in and around Sanford?

A. I had charge of them. I was his general agent and had charge of his properties. I might enlarge that, because he had properties in Alachua County, and at St. Augustine, and I was general agent in charge of all his properties in Florida.

Q. Do you know the lands, formerly in Orange County, Florida, known as the Teresa Rodriguez grant, afterwards known as the Powell grant, being described on the government map as Section 37, in Township 19, South, Range 28, East, and Section 41, in Township 19, South, Range 29 East, containing about fifty-four hundred acres of land?

A. Yes sir.

Q. Do you know where that grant is located?

A. Yes sir.

Q. Did you know George C. Powell and his son, George W. Powell, in their lifetime?

A. Yes sir.

Q. Did you have anything to do with the purchasing of the interest of the Powells in this land for General Henry S. Sanford, in October or November, 1881?

A. I did.

Q. At that time please state whether or not you went upon the land and for what purpose.

A. I went out to take possession of it.

Complainants move to strike the foregoing answer, on the ground that it is the legal conclusion of the witness.

Q. Did you go upon the lands?
A. Yes sir.
Q. Was that at or about the time of this purchase?
A. It was after the purchase.
Q. How long afterward?
A. A short time.
534 Q. Who did you meet and see upon the land?
A. The elder Mr. Powell.
Q. George C. Powell?
A. Yes sir.
Q. Please state fully what occurred when you were out there, between you and Mr. Powell, in reference to the land.

To which question complainants object, on the ground that the record shows that George C. Powell is dead, and any transaction between George C. Powell and this witness is incompetent, as there is no opportunity for cross-examination of Powell.

Q. State what was done, not what was said, but what you did there.
A. Well, it was so closely related with Mr. Powell that it would be difficult to state that without the other. I simply went out there, saw Mr. Powell, and he showed me the improvements on the property, and the lines of the property.
Q. What were the improvements that he pointed out to you?
A. The sawmill and an orange grove—I think two groves; one I am certain of; I am not positive whether there were two, but I think there were two.
Q. What buildings were there?
A. A dwelling, and I think a small dwelling for the son.
Q. Who did you see living on the grant?
A. Mr. Powell, the elder Mr. Powell.
Q. What did you say you did in reference to the lines of the grant?
A. He showed me the lines, or pointed them out to me. I had some talk with him as to repairs to the mill, and as to the business he was doing there at the mill.

Complainants move to strike the last answer on same ground stated in last objection.

Q. What sort of a mill was it? I mean as to equipment and business.

535 A. It was to cut small timber for dwelling purposes, house construction.

Q. After you went on the grant who, if anybody, did you as agent for General Sanford have in charge of the grant for you?

A. I can't think of the man's name, but he lived at Clay Springs, and I hired him to go over there and look after the mill, and see that it was looked after, and to look after the grove. They shipped the fruit by the load to the Sanford store.

Q. Before you put this man in charge, who did you have in charge?

A. Mr. Powell stayed there a while.

Q. Was that with your permission?

A. With my permission, yes.

Q. This party at Clay Springs, please state whether or not he reported to you as your agent.

A. He did.

Q. In reference to this grant?

A. He did.

Complainants object to the last two questions on the ground that same is leading, and move to strike the answers on same ground.

Q. Well, state who he did report to.

A. He reported to me while I was in charge of the property.

Q. What did you do in reference to verifying the lines of the property that had been shown to you by Mr. Powell?

A. I had Mr. William Beardall survey it.

Q. Who was Mr. William Beardall?

A. He was a young Englishman that came out there and was employed as an engineer for the lands at Sanford.

Q. In whose employ was he afterwards?

A. The Florida Land and Colonization Company's.

Q. Do you whether or not his name was William Beardall?

A. William Beardall, yes.

Q. Who succeeded you in charge of the property after you ceased to be General Sanford's agent?

A. Mr. E. R. Trafford.

536 Q. What connection did Mr. E. R. Trafford have afterwards with the Florida Land and Colonization Company?

A. He became manager of it. I was afterwards manager of the Florida Land and Colonization Company, but for only a short time, and he succeeded me as manager of the Florida Land and Colonization Company. Sanford sold the property to the Florida Land and Colonization Company during my period.

Q. What did you state in reference to oranges having been shipped off of this land?

A. I had this young fellow who acted as agent to look after the Powell grant ship them to the Sanford store, by way of the Wekiva River.

Q. Whose store was the Sanford store?

A. It had been Mr. Sanford's, but after the Florida Land and Colonization Company succeeded Mr. Sanford it was gradually closed out, and leased, finally, to other parties.

Q. Do you know whether or not Mr. George C. Powell had any business or training with the store before the purchase of this land?

A. Yes sir.

Q. Do you know whether or not that had any connection with the purchase?

A. I understand that he was heavily in debt to the Sanford store for advances for raising cotton.

Complainants move to strike the last answer on the ground that same is purely hearsay.

Q. Have you any recollection of the trading?

A. Yes, I was bookkeeper and made out the account.

Complainants move to strike the last answer on the ground that the accounts and books are the best evidence.

Q. Please state whether you recollect of your own mem-

ory of his trading at the store and obtaining advances at the store.

To which question complainants object, on the ground that it seeks evidence not the best evidence.

537 A. Yes sir.

Q. Please state if in connection with your business you have had experience and acquired information in regard to the value of pine-timber lands and cypress-timber lands in Florida within the past ten or twelve years.

A. Well, I should say it had advanced very considerably.

Q. The first question is as to whether you have had experience in those matters.

A. Yes, I have had experience.

Q. Will you please state whether the values of pine-timber land and cypress-timber land have advanced in that period and increased in value or otherwise?

A. They have increased in value.

Q. To what extent? State the values formerly, as well as you can recall them, and about what you regard now as the values of pine-timbered land and cypress-timber lands.

A. Well, we sold first class timber lands at from fifty to seventy-five cents an acre twelve years ago, and these lands are today worth anywhere from ten to fifteen dollars, where they are near transportation, where they are accessible.

Q. What about the present values of cypress-timber lands?

A. They have materially improved and increased, in proportion to the time; they are very much more costly.

Complainants object to the last question and move to strike the answer thereto, on the ground that same is immaterial and irrelevant and does not tend to prove any issue in this case.

Q. What is about the average market value, would you say, of cypress-timber lands?

A. It is hard for me to give a fair answer to that, Mr. Cooper, because my own direct experience has in-

538 cluded very little cypress; it is only what I have heard in discussion with other men who deal in cypress timber; we have had but very little of it, and I have had

very little to do with handling cypress timber, but my general impression—

Q. (Interrupting) You have investigated it to some extent?

A. Yes.

A. (To former question, continued)—is that it would run from twenty to thirty dollars an acre, where it is near transportation.

Complainants move to strike the foregoing answer, on the ground that the witness has disqualified himself as an expert as to cypress lands.

Q. You have dealt in cypress lands to some extent?

Same objection as above.

A. To some extent, but not recently.

Q. From your knowledge that you have had formerly, yourself, and your information as to the present market value, can you state whether the market value has increased or not?

A. Yes sir.

Complainants object to the last question and move to strike the answer because the same condition is not shown to exist in the lands the witness has handled and the lands under litigation.

Cross-Examination.

By Mr. Jones:

Q. Colonel Ingraham, when did old man Powell die?

A. I don't know.

Q. I believe you testified that you know nothing about this land since '82?

A. About '82. My connection with the Florida Land and Colonization Company ceased about '82. I went in the railroad service then.

The hearing was here adjourned, subject to further notice.

539 District of Florida, Circuit of the United States.

Enrique del Pozo y Marcos et, Complainants,
vs.
Wilson Cypress Company, Defendant.

Now on this day for the above cause it is hereby agreed by the counsel for the respective parties that the time of taking testimonies hereby shall be extended for the further period of sixty days from May 15th, 1910.

JONES & JONES,
W. W. DEWHURST,
Solicitors for Complainant.

.....
Solicitor for Defendant.

And that the Circuit Judge may make the order extending the time in any place that he may be, in or out of the circuit.

The counsel for the respective parties having by agreement filed in this cause stipulated that the testimony of Eugene M. Sanchez, witness called by the complainant, should be taken down by a stenographer and by her written out, and reported by the Master as taken before him. The said witness, EUGENE M. SANCHEZ, was duly sworn by Chas. A. Bromley, a notary public, and being so duly sworn testifies as follows:

Question. What is your name?
Answer. My name is Eugene M. Sanchez.
Ques. What is your age?
Answer. My age is thirty-three (33).
Ques. Where is your residence?
Answer. In Havana, Cuba.
Ques. Where were you born?
540 Ans. In St. Augustine, Florida.
Ques. Where were you educated?
Ans. St. Joseph's Academy, St. Augustine, Florida.
Ques. What kind of education did you have?
Ans. Common school education.
Ques. What kind of business are you now engaged in?
Ans. At present engaged in commercial business.

Ques. How long have you lived in Spanish speaking countries?

Ans. Five years.

Ques. What is your present employment?

Ans. Manager of business of the firm of Foster & Reynolds of Havana, Cuba.

Ques. Does that business require you to be familiar with the reading and writing of the Spanish language?

Ans. To a considerable extent.

Ques. State your familiarity with the reading, writing and speaking of the Spanish language.

Ans. My knowledge of the Spanish language is such that I am able to converse on ordinary subjects, and to read without difficulty.

Ques. How long have you been able to read and write the Spanish language?

Ans. About two years.

Ques. What has been your residence for the last three years.

Ans. Havana, Cuba, with the exception of four months during the summer of the year of 1909.

Ques. During these last three years have you been in the habit of hearing the Spanish language spoken, and use that language when occasion requires in social intercourse?

Ans. Yes sir.

Ques. Were certain Spanish documents representating [representing] to be birth, death and marriage certificates lately sent you, with the request that they be verified?

541 Counsel for defendant objects to that question, on the ground that it is immaterial, incompetent, and that there has been no foundation laid for same.

Ans. They were.

Ques. State how many approximately.

Counsel for defendant urges same objection as above.

Ans. Approximately nineteen documents.

Ques. State what you did to verify these documents.

Same objection.

Ans. I investigated the authority of each document in question by comparing the same with the original records, churches and courts where such official records are kept, and in each case learned from the reference given by each document that the same were true copies of such documents and may be found in the books of the church according to the copies referred to in each case. The priest or secretary of the church in charge of the books permitted me to have free access to the records of the church, and in each case the original was read to me and agreed absolutely with the copies referred to herein.

Ques. Is it a custom to keep a register of the sacraments of marriages and baptism in such countries?

Defendant's counsel move to strike the answer immediately following on the ground that it is incompetent, that there has been no foundation laid for the testimony, that there has been no authenticity of records established, and is not the best evidence.

[Ans.] It is in evidence that in Spanish speaking countries it is a custom to keep an official register of the administration of the sacrements [sacraments] of baptism and marriage, and also a record of the burials of the inhabitance [inhabitants].

Ques. Please state if you know from your investigation that that is the custom in Cuba?

542 Objection:

That the evidence offered is incompetent, and that there is no foundation laid for it, and that it is improper and leading.

Ans. Yes, I do, and the same system has maintained for many years in Cuba.

Ques. Please state who is in charge of the church records of the marriages, baptisms and births.

Objection:

We object to the question on the ground that the witness is incompetent to testify, that there is no foundation laid, that the question is too indefinite to base his testimony upon.

Ans. A priest, secretary or custodian have charge of all

church records in the Catholic churches of Cuba. Baptismal, marriage and death records are kept in books used exclusively for such purposes. No one is allowed to remove from the church the books belonging thereto, and the only method of verifying such records is by an examination of the books and with certified copies of the records containing the marriages, deaths and burials, which are issued by the secretary in charge of such records, and as a rule bears the parochial stamp of the church.

Ques. Where a certified copy is furnished under the hand of the priest in charge of the parish, or when the priest has a secretary, under the hand of the secretary, have they also an official stamp of the church in question.

Ans. Yes sir.

Ques. Is the secretary the custodian of the official register in the absence of the priest?

Objection:

We object to that question, on the ground that no foundation has been laid for same, and that the witness is incompetent to testify, that it is not the best evidence, and there is no connection between the question and the instrument mentioned.

543 Ans. The secretary is the custodian in the absence of the priest, with the exception of smaller parishes where no secretary will be found.

Ques. In your investigation of these nineteen documents, and from your previous investigations of the original registers of marriages, births and deaths, please state whether it is customary to identify the parties baptised or married or buried, by naming the parents or residence of the two parties.

Objection:

We object to that question on the ground that there is no foundation laid for it, there is no connection between the records and instruments in question, and that it is not the best evidence.

Ans. It is true in the church matters, record matters and social matters, that is to say on account of the general system of intermarriages a part at least of the names of the parents

are used by the children, and the wives likewise use their maiden names to some extent.

Answer continued. It is the custom that in the issuing and recording of all papers pertaining to the marriages, births, and deaths in the churches of Havana, Cuba, the parentage and residence of the parties concerned are recorded.

Ques. Are they also recorded in the original record of the church?

We object to that question as leading and upon the same ground of objection to the last question.

Ans. They are, as a rule, recorded in the original record.

Ques. Paper handed the witness, and the witness is asked to state what the paper is.

Ans. This paper is a certificate of the burial of the body of Dona Maria de Jesus Rodriquez, who was born in the City of Havana and at the time of her death resided in the Village of Guana Bocoa, who was the daughter of Lorenzo and Isabell Casilda Pieuma, and the widow of Sub-Lieutenant of Artillery Miguel Marcos.

544 Ques. State whether or not you found, and if so where, an original register which contained an entry in regard to the burial of Teresa Rodriquez.

Objection:

We object to that question because there is no foundation laid for it, and the question is incompetent and that it is not the best evidence.

Ans. In the Village of Guana Bocoa, Cuba, in the Church of the Asuncion.

Ques. Please state who produced the register to you.

Ans. The secretary in charge of all of the records of that church.

Ques. What as [is] the character of that book. [?]

Objection:

We object to that on the ground that it is not the best evidence.

Ans. This book is a book in which is contained only the

records of the deaths and burials of white persons in the Parish of the Church of the Assuncion in Guana Bocoa covering the year 1850.

Objection:

We move to strike that answer on the ground that it is incompetent and irrelevant and that it is not the best evidence and that there is no foundation laid for it.

Ques. Did it appear to be a book kept in regular order by the parish priest?

Objection:

We object to that question as leading and that it is incompetent and that there is no foundation laid for it.

Ans. It had the appearance of being a book kept in the regular order and containing the true records of the church in which all death records were made.

Ques. State by whom the entry appeared to have been made?

Objection:

We object to that question on the same grounds stated in the last objection.

Ans. The entry appeared to have been made by the secretary of the church and signed as such records are signed by the pastor, who was the priest in charge.

Ques. When you say who was the priest in charge
545 do you mean the priest in charge at the date when the burial entry was made?

Ans. I do.

Ques. Did the entry in the book appear to be made at or about the time at which the ceremony thereon noted was performed?

Objection:

We object to that question as leading, seeks the opinion of the witness and is incompetent and without foundation.

Ans. The record appeared to be made at the time of the

death of the party in question, and the same a record such as preceded and followed it of the deaths of members of that parish, in other words, a regular record of them in their proper order.

Ques. State how you compared this paper that you now hold in your hand purporting to be a copy of the official register with the original.

Ans. By having the original register read to me by the secretary in charge of the books, and afterwards by an inspection of the same.

Ques. State whether or not that while the original was read to you by the custodian in charge of the record, you followed him with this paper in your hand, so that you can swear that the paper which you hold is a true and correct copy of the original down to the point where the certificate is attached?

Objection:

We object to that question as leading, incompetent and without foundation.

Ans. The secretary read to me the entry in question, which I followed word for word, and am thereby enabled to swear that this paper is a true copy of the certificate of the death of Maria de Jesus Rodriquez.

Ques. Do you mean that it is a true copy of the official record kept in the church at Guana Bocoa, which you said was presented to you by its custodian?

546 Objection:

We object to that question as it is leading, seeks incompetent testimony, irrelevant and without foundation.

Answer. I do sir.

Ques. What is the certificate attached to that paper, if any?

Objection:

We object to that question, as the certificate is the best evidence of its own character, and the paper is not in evidence.

Ans. The certificate pertains to the authenticity of the record taken from the books referred to and signed by the

parish priest in charge of the church and contains the original stamp of the Church of the Assuncion of Guana Bocoa, Cuba.

Ques. Can you state whether or not the person signing that certificate was the parish priest at the time it was given or not.

Ans. He was.

The complainant offers the papers in evidence as the Complainant's Exhibit No. 1, at the hearing May 5th, as a proved copy of the original certificate of the burial of the body of Therresa Rodriquez.

We object to the admission of this paper on the ground that the record from which it purports to have been taken has not been properly authenticated, and that thete [there] has been no proper grounds laid for the admission of this paper, that the evidence is incompetent and it is not the best evidence, and is not pertinent to the issue in this case.

Ques. Paper handed witness and he is asked to state what the paper is?

Ans. This paper is a certificate of the marriage record of Miguel Marcos, son of Miguel Marcos and Teresa Rodriquez, to Josefa Maria Cleofas Diaz.

Ques. Have you verified from the official record that paper as a true copy of an original parish record?

547 Objection:

We object to that question on the ground that it is leading, seeks testimony irrelevant, because it is incompetent and there is no foundation laid for the testimony, and it is not the best evidence.

Ans. I verified this paper from the record of the Church of St. Augustine de Ceiba Mocka, and am prepared to swear that it is a true copy of the original record of marriage kept in the church above mentioned.

Ques. Please state how the certificate attached to this paper is verified.

Objection:

We object to that question on the ground that there is no

foundation laid for it, the evidence is incompetent and that it is not the best evidence.

Ans. It bears the parochial stamp of the Church of Saint Augustine de Ceiba Mocha, and (the certificate) is verified by the Notorial College at Havana by Sonifano Dominquez and Manuel Zambrano, both notaries public and members of the Notarial College of Havana, and by having the seal of the College of Notaries affixed thereto and the stamp tax upon each document, having been paid according to the stamps affixed thereto.

Ques. State whether or not the paper on which the certificate was given you was regular stamped paper.

Objection:

We object to that question as there is no foundation laid for it and it is incompetent.

Ans. It is such stamped paper as was generally used for such documents during the Spanish regime.

Ques. If the same questions that were asked you as to Exhibit No. 1 were now asked you as to the paper you hold in your hand, would the answers to all those questions be the same as to this paper as they were to Exhibit No. 1, excepting as to the time and place where the original register or record was found?

Ans. My answers would be the same as those
548 asked me regarding Exhibit No. 1, with the exception of the time and place.

The counsel asks to have noted that the omission to ask the same questions with reference to Exhibit No. 1, and the method of its verification, is by agreement that the above form of questions may be used with the same effect when the answers to every of the above questions and answers would be the same. The counsel for the defendant having the benefit of each and every of his objections or motions to strike as made to the questions which were asked with reference to Exhibit No. 1. This method being adinted [adopted] to save time only and avoid repeating each of the questions asked as to Exhibit No. 1 in the presentation of the complainants testimony to prove the verity of this exhibit, and the subsequent Exhibits Nos. 1, 2, 3, 4, 5, etc.

Under the above stipulation as to the manner in which the same is proved to be a true copy, this paper is offered in evidence by complainant and marked Complainant's Exhibit No. 2, at the hearing May 5th.

Ques. Paper is handed witness and he asked to state what the paper is.

Ans. This is the certificate of the burial of the body of Miguel Marcos, the ligitimate [legitimate] child of Miguel Marcos and Terresa Rodriquez.

Ques. Please state if you have verified that paper with the original from which the same purports to have been taken, and if so where that original was found.

Objection:

We object to that question as leading, as seeking incompetent testimony and that there is no foundation laid for it.

Ans. I verified that paper with the records of the Church of St. John the Baptist of Jaruco, Cuba, and found it to be a true copy of the original record.

Ques. If the same questions that were asked that were asked you as to Exhibit No. 1 were now asked you as to the paper you hold in your hand, would the answers to all those questions be the same as to this paper as they were to Exhibit No. 1 excepting as to the time and place where the original register or record was found?

549 Ans. They would be exactly the same with the exception of the time and place.

Ques: Please examine the paper and state how the certificate thereto attached is signed and proved.

Ans. The proof of this certificate in the first place is by the official seal of the church and the parish priest making the same, who later appeared before the notary public of the Notarial College of Havana.

Ques. Is it the seal of the College of Notaries and the notarial stamp affixed to the paper?

Objection:

We object to that question because there is no foundation laid for it.

Ans. It is the official seal of the College of Notaries as shown.

Defendant's counsel object to the admission of the paper in evidence filed by complainant as Exhibit No. 3, on the ground that there has been no proper foundation laid for the introduction of same, the evidence of such as [a] sort to be introduced is not the best evidence, and that the said paper is incompetent evidence, and that further the official record or the paper itself has been properly authenticated.

Under the same stipulation as to the method of proof which was made as to Exhibit No. 2, counsel for complainant now offers the paper in evidence as Exhibit No. 3, at the hearing May 5th.

We object to the introduction of Exhibit No. 3 above mentioned, on the ground that there is no proper foundation laid for the admission of the same, that it is sought to introduce incompetent testimony, and further the original record or copy has not been properly authenticated and is not the best evidence.

Ques. Paper handed witness and he asked to state what that paper is.

Ans. This paper is the certificate of the baptism of Felix Genaro Marcos, ligitimate [legitimate] son of Don Miguel Marcos of St. Augustine, Florida, and Dona Josefa Maria Cleofas Diaz.

556 Ques. Have you verified that paper by comparison with the original record of which it purports to be a copy?

We object to that question as leading and because it assumes the facts that have not been testified to and because there is no foundation laid for the witness' testimony, and is not the best evidence.

Ans. I have verified it by confronting it with the original record of baptisms of the parochial church of Aguacata, Cuba, and the parish priest in charge read to me the original record of the church.

Ques. Who made the certificate attached to that document and in what manner?

We object to that question, because there is no foundation laid for it and it is not the best evidence.

Ans. The certificate attached to this document was made by the parish priest in charge of the church at Aquacata, before two notaries of the Notary College of Havana, according to the stamp attached thereto.

Ques. If all the questions which were asked you with reference to Exhibit No. 1 were now asked you with reference to this document which you hold in your hand would your answers be the same as they were with reference to the questions that were asked you as to Exhibit No. 1, excepting as to the place where the original register was found and the time?

Ans. They would, with the exception of the time and place.

Objection:

Counsel for defendant insists upon the same objections to the questions and answers as asked to Exhibit No. 1, as if the questions and answers have been here repeated.

Ques. State whether or not you can swear positively that that document which you hold in your hand is a true and correct copy of the original record of which it purports to have been taken?

We object to that question on the ground that there is no foundation laid for it and it assumes facts that have not been proven and the testimony is incompetent and not the best evidence.

Ans. From my investigations of this document I have in my hand I can positively swear that it is a true and correct copy of the certificate of the baptism of Felix Garcia Marcos, as it purports to be.

551 Subject to the stipulations in reference to the manner of proof to this document as set out under Exhibit No. 1, complainants counsel offers the paper in evidence, marked Complainants Exhibit No. 4, at the hearing May 5th.

defendant reserving the right of his objections as noted under Exhibit No. 1.

We object to the admission of this paper marked Exhibit No. 4 in evidence, because there is no proper foundation laid for the introduction of the same, and its admission is sort [sought] upon testimony incompetent and which is not the best evidence, and that this copy has not been properly authenticated.

Ques. Paper handed witness and he is asked to describe it.

Ans. This document is the certificate of the marriage of Dorothea Marcos, daughter of Miguel Marcos and Terresa Rodriquez, to Nicolos Jose del Pozo.

Ques. Did you verify that paper purporting to be a copy of the official record with the original record from which it recites that it was taken?

Objection:

We object to that question on the ground that there is no foundation laid for it, and it seeks incompetent testimony and does not seek the best evidence.

Ans. I did. I confronted it with the original record of marriage in the records of the Church of the Jesus, Maria and Jose in the City of Havana, Cuba, and from my investigations can swear that it conforms to the original record referred to and that it is a true and correct copy of the original.

Ques. Please state how that paper is certified.

Objection:

We object to that question on the ground that there is no foundation laid for it and it seeks incompetent testimony, and is not the best evidence.

Ans. The paper is certified to by the official seal of the Church of the Jesus, Maria and Jose, as shown upon the face of it, and signed by Father Gonzalo Usera, the parish priest of the said church.

552 Ques. If all the questions that were asked you with reference to Exhibit No. 1 were now asked you with regard to the manner in which you verified this particular

document would your answers to each and every one of such questions be the same as you gave with reference to Exhibit No. 1?

Ans. They would, as the document was verified in the same manner, with the exception as to the time and place where the same was verified.

Defendant's counsel urge the same objections to the quqestions and answers to this Exhibit No. 5 that were urged to the questions and answers as to Exhibit No. 1, as though the said questions and answers had been repeated.

Ques. Your manner of verifying that document having been as stated from the answers to the last interrogatory, do you say that that paper is a true copy of the original register from which it purports to have been taken?

Objection:

Defendant's counsel object to that question, as said question seeks testimony which has not been proven, and seeks incompetent evidence, and that there has been no foundation laid for the same.

Ans. I do declare it to be an exact copy of the record from the books of the church referred to.

Subject to the stipulations in regard to the testimony which the witness would give in regard to the official character of the official register, its custody and the acts done by him to verify this instrument, it is offered in evidence as Complainants Exhibit No. 5.

We object to the admission of this paper in evidence, on the ground that there has been no proper foundation laid for the introduction of same, and it is not based upon sufficient testimony, and that it is not the best evidence of which it seeks to prove, and further the said copy nor the attached record of which it is taken has been properly authenticated.

553 Ques. Paper handed witness and he is asked to say what it purports to be.

Objection:

We object to that quqestion, as no foundation has been laid for it.

Ans. This paper is a certificate of baptism of Christina del Pozo, the ligitimate [legitimate] daughter of Dorothea Marcos and Nicilos del Pozo

Ques. State whether or not you have compared that paper with an original document, and if so, what document and where was it found?

Objection:

We object to that question as leading, and because it seeks incompetent testimony and is not the best evidence.

Ans. I compared this paper with the records of the Church of Our Lady of Guadalupe of the City of Havana, and can swear that it is a true copy of the entry on the books referred to regarding the baptismal in question.

Ques. If all the questions were asked you, which were asked you with reference to Exhibit No. 1 as to the manner in which you verified that document, and the the character and custody of the register with which the same was verified, would your answers be the same as they were to the questions asked you with reference to Exhibit No. 1?

The counsel for defendant urges the same objections to the question and answers as were urged with reference to Exhibit No. 1 as if all the questions and answers had been repeated as to this Exhibit No. 6.

Ans. They would be the same with the exception as to the time and place where the verification was made.

Ques. Your answers to all such questions being as you have stated, do you say that the document which you hold in your hand is a true and correct copy of the official record from which it purports to have been taken.

Objection:

We object to that question as seeking incompetent evidence and because no foundation has been laid for same.

Ans. I do say that it is a true and correct copy as it purports to be.

Ques. Please state in what manner that paper is certified.

Objection:

We object to that question on the ground that there is no foundation laid for it and it seeks incompetent evidence and not the best evidence.

554 Ans. The paper is certified to by the parish priest of the Church of Our Lady of Guadalupe at Havana, and bears the official seal of said church.

Subject to the stipulations as to the testimony the witness would give as to the official character of the register with which this document is compared, and its custody and the acts done by him to verify the same, this paper is offered in evidence as Exhibit No. 6, at the hearing May 5th.

Counsel for defendant objects to the admission of this paper offered in evidence as Exhibit No. 6, and urges the same objections as was urged to Exhibit No. 5.

Ques. Paper handed witness and he is asked to describe it.

Objection:

I object to that question, as there is no foundation laid for it and it seeks incompetent testimony and not the best evidence.

Ans. This paper is a certificate of marriage of Christina del Pozo, legitimate daughter of Nicolas and Dorothea Marcos, to Alejandro Marcos Nunez.

Ques. State whether or not you have compared that paper with any document which purports to be an original register of the marriage, if so, where and how?

Objection:

We object to that question as seeking incompetent testimony and because there has been no foundation laid for the question, and because it does not seek the best evidence, and because it is immaterial to the issues in this case.

Ans. I investigated this paper by confronting it with the original record of marriages as kept in the church known as Santo Angel in the City of Havana, and found it to be a true and correct copy of the official marriage record of the persons described.

Ques. If the same questions were asked you with reference to the official character of the register with which this document was compared, and its custody and the acts done by the witness to prove the verity of that paper, would your answers be the same that you gave to the interrogatories asked you as to Exhibit No. 1, excepting only as to the time and place?

555 Counsel for defendant urges the same objections to the questions and answers with reference to this paper as were urged to the questions and answers with reference to Exhibit No. 1, as if the said questions and answers had been repeated here.

Ans. They would be exactly the same as the same method of verification was used.

Ques. Your answers being as stated in answer to the last interrogatory, do you state that that paper is a true and correct copy of the original official document of which it purports to be taken as to this particular entry.

Objection:

We object to the question, on the ground that there has been no foundation laid for the testimony, and it seeks incompetent testimony, and that it does not seek the best evidence.

Ans. I declare it to be a true and correct copy taken from the records above referred to showing the entry of the marriage of the parties named.

Ques. Please state the manner in which the paper is certified.

Objection:

We object to that question, because it does not seek the best evidence and there is no foundation laid for the same and it seeks incompetent testimony.

Ans. The paper is certified to by the Parish Priest or Cus-

todian of the record of the Church of Santo Angel, and bears the official stamp of said church.

Subject to the stipulations made with reference to the official character of the register with which this instrument is stated to have been compared, and its custody and the acts done by the witness to verify the same. Complainants offer this paper in evidence as Complainants Exhibit No. 7 at the hearing Mat [May] 5th.

Objection:

Counsel for the defendant objects to the admission of the paper in evidence as described as Exhibit No. 7, on the same ground urged as to Exhibit No. 5.

Ques. Paper is handed witness and he is asked to describe it.

Objection:

We object to the question, on the ground that there has been no foundation laid for it and that it seeks incompetent testimony.

556 Ans. This is the burial certificate of the burial of the body of Dorothea Marcos Rodriquez, daughter of Don Miguel and Terresa Rodriquez and the widow of Nicolos del Pozo.

Ques. State what acts you did to verify that paper, if any?

Objection:

We object to that question, because there is no foundation laid for it, and it assumes facts that have been proven, and seeks incompetent testimony.

Ans. I confronted this paper with the original record of burials of the Church of Our Lady of Monserrate in the City of Havana, and found it to be an exact copy of the record of such burial entered in the books of that church.

Ques. If all the questions asked you with reference to the official character of the questions with which that document was compared and its custody and the acts done by you to verify the same with reference to Exhibit No. 1 were repeated

as to this document, would your answers to each of those questions be the same as you gave to the questions asked you with reference to Exhibit No. 1, excepting only the place of the custody of the official register and the time that the verification was made.

Counsel for defendant urges the same objections to the questions and answers as were urged to the questions and answers with reference to Exhibit No. 1, as if same were repeated here with reference to this paper.

Ans. They would be the same as the manner of verification was made in the same way.

Ques. Your answers being as above, please state whether or not this paper is a true and correct copy of the entry in the official register as it purports to be.

Objection:

We object to that question, because it assumes facts which have not been proven, and because it seeks incompetent testimony and because there is no foundation laid for the evidence.

557 Ans. Upon my investigations I do swear that it is a true and correct copy of the record of the burial of Dorothea Marcos Rodriquez.

Ques. Please state the manner in which that paper is certified?

Objection:

We object to that question as seeking incompetent testimony and because there is no foundation laid for the evidence, and because it does not seek the best evidence.

Ans. The paper is certified by the Parish Priest in charge of the church records, and bears the official seal of said church.

Subject to the stipulations made as to the official character of the register with which this instrument was compared, and its custody and the acts done by the witness to verify the same, this paper is offered in evidence as Exhibit No. 8 at the hearing May 5th.

Objection:

Counsel for defendant urges the same objections to the admission of this paper in evidence described as Exhibit No. 8 that were urged as to the admission of the paper described as Exhibit No. 5.

Ques. Paper handed witness and he is asked to state what that paper is.

Objection:

Counsel for defendant objects to the question, on the grounds that there is no foundation for same and it seeks incompetent testimony and does not seek the best evidence.

Ans. This is a death certificate of Christina del Pozo Marcos de Nunez, legitimate daughter of Don Nicolos del Pozo and Dorothea Marcos y Rodriquez.

Ques. State what acts you performed to verify that paper as a true and correct copy of the official and original record from which it purports to have been taken.

Objection:

We object to the question, on the ground that there is no foundation laid for same and it assumes facts that have not been proven and seeks incompetent testimony.

Ans. I verified this paper by confronting it with the original Court Record of Municipal Court of the Northern District of Havana, Cuba.

Ques. Was this official record a public record?

558 Objection:

We object to the question as seeking incompetent testimony and because there is no foundation laid for same, and because there is no proper authentication of the official record and it does not seek the best evidence.

Ans. It is a public record of the Municipal Court of the Northern District of Havana.

Ques. By whom was that record presented?

Ans. By the clerk of the court.

Ques. Was he a public official?

Objection:
We object to that question, on the same ground as the last question just above.

Ans. He is a secretary or clerk of the court to whom I was referred by the Judge who I called upon, and by the way he verified this document he was a public official.

We move to strike the answer, on the ground that it is incompetent and not the best evidence.

Ques. Was this register which was presented to you as you testify, presented as an official register of the Court?

Objection:
We object to that question, on the ground that it seeks incompetent testimony and there is no foundation laid for it, and that it is not the best evidence and that the official record has not been authenticated.

Ans. It was presented to me as an official record of the Court.

Ques. State how you verified the paper you hold in your hand with the official record presented to you by its clerk.

Ans. By making the clerk of the Court read the official entry to me word for word, while I followed with the copy and verified in that way the document that I now hold in my hand.

Ques. From that verification in which you have just testified, do you state that that paper is a true and correct copy of the official record in the Court of the Northern District of Havana, Cuba.

559 Objection:
We object to that question, on the ground that it has no proper foundation, and because it assumes facts that have not been proven and is not the best evidence.

Ans. From my investigation I swear that it is a true and

correct copy of the certificate of the death of Christina del Pozo, as it appears on the Court Records referred to.

Ques. Is the seal attached to this paper the official seal of the Court named in this document.

Objection:
We object to that question, on the ground that it seeks incompetent testimony and is not the best evidence.

Ans. The seal is that of the Court of the Municipal Court of the northern district of Havana, Cuba.

Complainants offer the paper in evidence as Complainants Exhibit No. 9 at the hearing May 5th.

Counsel for defendant objects to the admission of this paper in evidence, on the same ground urged as to the admission of paper described as Exhibit No. 5.

Ques. Paper handed witness and he is asked to describe it.

Objection:
We object to that question, on the ground that it seeks incompetent testimony and that there is no foundation laid for the question.

Ans. This paper is the baptismal certificate of Ernesto Nunez del Pozo, the legitimate child of Elenjandro Nunez and Christina del Pozo.

Ques. State what acts you did to verify that paper as a true copy of what it purports to be?

Objection:
We object to that question as immaterial and being without foundation.

Ans. I verified this paper by confronting it with the official record found in the Church of Our Lady of Guadelupe in the City of Havana, and swear it to be a true copy of the record of the baptism of Ernesto Nunez del Pozo, as it purports to be.

560 We move to strike the answer, on the ground that it is incompetent.

Ques. If each of the questions asked you with reference to Exhibit No. 1 as to the official character of the record with which that document was compared, its custody and the acts done by the witness to prove its verity, which were asked you with reference to Exhibit No. 1, would your answers to each of those questions be the same as the answers given to the questions asked you with reference to Exhibit No. 1, except only as to the place where the original record was found and the time at which you verified that paper.

Objection:

The counsel for defendant urge the same objections as were urged to the questions and answers as to Exhibit No. 1, as if the same had been repeated here.

Ans. They would be the same as the investigations were made in the same manner.

Ques. State whether or not you can swear that that paper is a true and correct copy of the official entry in the original record of the baptism of Ernesto Nunez del Pozo as it purports to be.

Objection:

Counsel for defendant objects to the question, on the ground that there is no foundation for same and it seeks incompetent testimony and not the best evidence.

Ans. From the investigation made by me I swear it is a true and correct copy as it purports to be of the baptism of Ernesto Nunez del Pozo. Subject to the stipulations made as to the official character of the Register with which this instrument was compared, and its custody and the acts done by the witness to verify the same, this paper is offered in evidence as Complainants Exhibit No. 10.

Objection:

Counsel for defendant objects to the admission in evidence of this paper described as Exhibit No. 10, on the same grounds that were urged with reference to Exhibit No. 5.

Ques. Paper handed witness and he is asked to describe it.

561 Objection:

Counsel for defendant object to the question, on the ground that there is no foundation for same and that it is immaterial and irrelevant.

Ans. This is a certificate of the marriage of Maria Garcia Marcos y Rodriquez to Augustin Garcia.

Ques. State what acts you did to verify that paper?

Objection:

Counsel for defendant object to the question, on the ground that it is immaterial and irrelevant.

Ans. I compared this paper with the record of marriages in the Church of Jesus, Maria and Jose, of the City of Havana, and found it to be an exact copy of the entry of the marriage of Maria Garcia Marcos to Augustin Garcia.

The counsel for defendant move to strike the answer, on the ground that it is incompetent and without foundation and is not the best evidence.

Ques. If the same questions were asked you with reference to this paper as to the official character of the register, with which the same was compared, and its custody and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, would your answers be the same as you gave to the questions asked you with reference to Exhibit No. 1, except as to the place where the official register was found and the time that the verification was made?

Objection:

Counsel for defendant urge the same objection to the questions and answers as were urged to the questions and answers with reference to Exhibit No. 1, as if the same were repeated here.

Ans. They would be for the verification was made in the same manner.

Ques. Is the seal attached to that certificate on the paper

which you hold in your hand, the official seal of the Church where the original record was found.

562 Objection:

Counsel for defendant objects to the answer, on the ground that no foundation has been laid for same and that it seeks incompetent testimony and not the best evidence.

Ans. The official stamp on this paper is the official seal of the Church of Jesus, Maria and Jose.

Subject to the stipulations made as to the testimony which the witness would give as to the official character of the register, with which this instrument was compared, and its custody and the acts done by him to prove its verity, this paper is offered in evidence as Complainants Exhibit No. 11.

Objection:

Counsel for defendant object to the admission of the paper described as Exhibit No. 11, on the same grounds for objections as were urged as to the paper described as Exhibit No. 5 above.

Ques. Paper handed witness and he is asked to describe it.

Objection:

Counsel for defendant objects to the question, on the ground that there is no foundation laid for same, and that the question is immaterial, irrelevant and that it is not the best evidence.

Ans. This is the certificate of the baptism of Genaro Maria Garcia, the legitimate son of Augustine Garcia and Maria Garcia Marcos.

Ques. State what acts you did to verify that paper as a true and correct copy of the original?

Objection:

Counsel for defendant objects to that question, on the ground that there is no foundation for it, and it seeks incompetent testimony and it is not the best evidence.

Ans. I compared it with the original record of baptisms in the Church of Jesus, Maria and Jose in the City of Havana.

Cuba, and found it to be a true and correct copy of the entry of the baptism of Genaro Garcia Marcos.

563 Q. If the same questions which were asked you as to the official character of the register with which you compared that paper, and its custody and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, would your answers be the same to each of the questions as given to the questions asked you with reference to Exhibit No. 1, excepting only the place where the official register was found and the time of its verification.

Objection:

Counsel for defendant urges the same objections to the questions and answers with reference to Exhibit No. 1, as if same were repeated here as to this paper.

Ans. They would be, for the verification was made in the same manner.

Ques. Please state if that paper is a true and correct copy of the official entry in the original record kept at the Church referred to in Havana.

Objection:

Counsel for defendant objects to the question, on the ground that it is leading and that there is no foundation laid for the same, and it assumes facts that have not been proven and seeks incompetent testimony and is not the best evidence.

Ans. From my investigation I swear this to be a true and correct copy of the original record of the baptism of Genaro Garcia Marcos as it purports to be.

Ques. Please state whether the seal or stamp on this paper is the official seal of the church named in question.

Objection:

Counsel for defendant objects to the question, on the ground that there is no foundation laid for same, and because it seeks incompetent testimony and does not seek the best evidence.

Ans. The seal shown on this document is the official seal

of the Church of Jesus, Maria and Jose in the City of Havana, Cuba.

Subject to the stipulations made as to the official character of the register and its custody, and the acts done by the witness to prove its verity, the paper in evidence is offered as Complainants Exhibit No. 12.

564 Objection:

The counsel for defendant objects to the admission of this paper described as Exhibit No. 12, on the same grounds that were urged with reference to Exhibit No. 5 as above.

Ques. Paper handed witness and he is asked to state what that paper is?

Counsel objects to that question, on the ground that there is no foundation laid for same and that it does not seek the best evidence.

Ans. This is a certificate of the marriage of Genaro Marcos Garcia, legitimate son of Augustine Garcia and Maria Garcia Marcos to Adelo Pechardo.

Ques. Please state what you did to verify that paper as a copy of the original of which it purports to be taken?

Objection:

We object to the question, on the ground that there is no foundation laid for same and that it is immaterial therein and seeks incompetent testimony and not the best evidence.

Ans. I confronted it with the official record of marriages as kept at the Church of Jesus, Maria and Jose at the City of Havana, and found it to be an exact copy of the entry shown on the books of the church of the marriage of the persons described in this paper.

Ques. If the same questions asked you with reference to the official character of the register, with which you compared this paper and its custody and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, would your answers be the same as given to each of the questions asked you with reference to Exhibit No. 1, ex-

cepting only the place where the original record was found and the time of its comparison.

Objection:

Counsel for defendant urges the same objections to the questions and answers asked with reference to Exhibit No. 1, as if same were repeated here with reference to this paper.

Ans. They would be, for the verification was made in the same manner.

Ques. Please state whether or not that paper is a true and correct copy of the entry in the official record of marriages of the parties therein named, as it purports to be.

565 Objection:

Counsel for defendant objects to that question, as there is no foundation laid for it and that it seeks incompetent testimony and assumes facts which have not been proven and does not seek the best evidence.

Ans. From my investigations I declare this to be a true copy of the original entry of the marriage in the official register of the parties named herein.

Ques. Please state if the seal stamped on this paper is the official seal of the church in which this official register was kept.

Objection:

Counsel for defendant objects to that question, on the ground that it is leading and seeks incompetent testimony and no foundation has been laid for same and does not seek the best evidence.

Ans. The stamped seal is the official seal of the Church of Jesus, Maria and Jose of Havana, Cuba.

Subject to the stipulations made as to the official character of the register with which this instrument was compared, and its custody and the acts done by him to verify the same, this paper is offered in evidence as Complainants Exhibit No. 13.

Counsel for defendant urges the same objections to the admission of this paper described as Exhibit No. 13 as were

urged to the admission of the above paper described as Exhibit No. 5.

Ques. Paper handed witness and he is asked to state what that paper is?

Objection:
Counsel for defendant objects to the question, on the ground that the same is immaterial and irrelevant, and that it does not seek the best evidence.

Ans. This is a burial certificate of the body of Genaro Garcia y Marcos, husband of Adella Pechando.

Q. State what you did to verify this paper as a
566 true copy of what it purports to be.

Objection:
Counsel for defendant objects to that question, on the ground that it assumes facts which have not been proven, and there is no foundation laid for same and that it seeks incompetent testimony and not the best evidence.

Ans. I confronted it with the records of burials as kept by the Church of Our Lady of Monserrete in the City of Havana, and found it to be a true and correct copy of the original entry of the burial of Genaro Garcia Marcos.

Ques. If all the questions asked you as to the official character of the register with which you compared this paper, and its custody and the acts done by the witness to verify the same which were asked you with reference to Exhibit No. 1, were asked you with reference to this paper, would the answers be the same that you gave to the questions and answers asked you with reference to Exhibit No. 1, excepting only as to the time the verification was made and the place where the original record was found.

Objection:
Counsel for defendant object to that question, on the same grounds that were urged as to the questions and answers which were asked as to Exhibit No. 1, as if the same were here repeated as to this paper.

Ans. They would be, for the method of verification was made in the same manner.

Ques. Is the signature attached to this paper the signature of the parish priest in charge of the parish named, and is the seal attached thereto the official seal of the church in question.

Objection:

Counsel for defendant objects to that question, on the grounds that there has been no foundation laid for same, and that it seeks incompetent evidence, which is not the best evidence.

567 Ans. The seal is that of the Church of Our Lady of Monserrete, and the signature shown is that of the preist in charge of the church at the present time.

Ques. State how you know the signature on the certificate to be the signature of the parish priest in charge.

Ans. From the records of the church as investigated by me and investigating the records, itself.

Counsel for defendant moves to strike the answer, on the ground that same is incompetent and without foundation.

Ques. Did you find the signature of the priest who signed the certificate appearing on the register repeated a number of times.

Objection:

Counsel for defendant objects to that question, on the ground that there is no foundation laid for it, and that it is leading and not the best evidence.

Ans. I found it to be the same as the signatures appearing on the register of the church for the last eight years.

Subject to the stipulations made as to the testimony, the witness would give as to the official character of the register with which this document was compared and its custody and the acts done by him to verify the same, except only as to the time and place, complainants offer this paper in evidence as Complainants Exhibit No. 14.

Counsel for defendant urge the same objections to the admission of the paper described as Exhibit No. 14, as were urged against the admission in evidence of the paper described as Exhibit No. 5.

Ques. Please describe the paper handed you.

Ans. This is a baptismal certificate of Augustin Garcia Marcos, son of Augustin Garcia and Maria Marcos.

Ques. State what you did to verify that paper as a true copy of the official register which it purports to have been taken.

568 Objection:

Counsel for defendant object to the question, on the ground that there is no foundation laid for same, and it seeks incompetent testimony and not thet best evidence.

Ans. I confronted it with the record of baptisms in the Church of Espirite Santo in the City of Havana, Cuba, and found it to be a true copy of the baptism of Augustine Garcia Marcos as it puports to be.

Ques. If the same questions were asked you with reference to the official character of the record with which you compared this document, and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, would your answers to each of those questions be the same that you gave to the questions asked you as to Exhibit No. 1, with reference to this document, excepting only as to the time and place.

Objection:

Counsel for defendant urge the same objections to the question and answers as were urged with reference to Exhibit No. 1, to this paper as if the same had been repeated here.

Ans. They would be, for the verification was made in the same manner.

Ques. Can you say that that paper is a true and correct copy of the entry in the official register of the church from which it purports to have been taken relating to the baptism of the party named in the certificate.

Objection:

Counsel for defendant objects to that question, on the ground that the said question is leading, that there is no foundation laid for same that said question seeks incompetent testimony and assumes facts that have not been proven.

Ans. From my investigation I can swear this paper to be an exactly true and correct copy as it purports to be of the entry referred to therein.

Ques. Will you state whether or not the stamp on that paper is the official stamp of the church named in the certificate.

569 Objection:

Counsel for defendant objects to that, on the ground that there is no foundation laid for same, that it seeks incompetent testimony and not the best evidence.

Ans. The stamp is an official stamp of the Church of Espirite Santo of Havana, Cuba.

Subject to the stipulations made with reference to the testimony the witness would give as to the official character of the register with which this document was compared, and its custody and the acts done by the witness to verify the same, excepting only as to the place where the official register was found, this paper is offered in evidence as Complainants Exhibit No. 15.

Counsel for defendant urge the same objections to the questions and answers with reference to the admission of this paper described as Exhibit No. 15, that were urged with reference to paper described as Exhibit No. 5.

Ques. Paper handed witness and he is asked to describe it.

Objection:

Counsel for defendant objects to that question, on the ground that it is immaterial and irrelevant, and does not seek the best evidence.

Ans. This is a certificate of the marriage of Augustin

Ricardo Garcia, ligitimate son of Augustin and Maria Garcia Marcos to Conceptiona Ochandarena.

Counsel move to strike the answer, on the ground that it is incompetent and without foundation.

Ques. State what you did to verify that paper as a true copy of the official entry in the original register of which it purports to have been taken.

570 Objection:

Counsel for defendant object to that question, on the ground that there has been no foundation laid for same, and that it seeks incompetent and not the best evidence.

Ans. I confronted it with the records of marriages at the Church of Our Lady of Monserratte in the City of Havana, and found it to be a true and correct copy of the entry, showing the marriage of Augustin Ricardo Garcia to Conceptiona Ochandarena.

Ques. If each of the questions were asked you as to the official character of the register from which it purports to have been taken and its custody and the acts done by you to verify the same, which were asked you with reference to Exhibit No. 1 was applied to this instrument, would your answers to each be the same as you gave to the questions asked you with reference to Exhibit No. 1, excepting only as to the time the verification was made and the place where the official register was found.

Objection:

Counsel for defendant urge the same objections to the questions and answers as were urged with reference to Exhibit No. 1, as if the same had been repeated here as to this paper.

Ans. They would for the verifications were made in the same manner.

Ques. Your answers being the same as to the manner in which you verified this paper, and the official character of the register, and its custody being as you have stated, do you state that this is a true and correct copy of the original entry in the official register named in the document herein mentioned.

Objection:

Counsel for defendant object to the question, on the ground that no foundation has been laid for the question, and it seeks incompetent testimony and not the best evidence.

Ans. From the investigations I made I can swear that the paper referred to is a true and correct copy of the entry in the records of the Church of Our Lady of Monserratte at Havana, Cuba.

571 Ques. Is the stamp attached thereto, the official stamp of the Church of Monserrette?

Objection:

Counsel for defendant object to the question, on the ground that no foundation has been laid for me, and that same seeks incompetent and not the best evidence.

Ans. The stamp shown on this paper is the official stamp of the Church of Monserrette of the City of Havana.

Subject to the stipulations made as to the testimony which the witness would give as to the official character of the register with which this instrument was compared, and its custody and the acts done by him to verify the same, this paper is offered in evidence as Complainants Exhibit No. 16.

Counsel for defendant urges the same objections to the admission of this paper in evidence as were urged to the admission in evidence of Exhibit described as No. 5.

Ques. Paper handed witness and he is asked to describe it.

Objection:

Counsel for defendant objects to that question, as immaterial and irrelevant, and does not seek the best evidence.

Ans. This paper is a baptism certificate or [of] Recardo Garcia Marcos, legitimate son of Augustin Garcia Marcos and Conceptiona Ochandarena.

Ques. State what acts you did to verify that as a true copy

of the original entry from which it purports to have been taken.

Objection:

Counsel for defendant objects to that question, on the ground that it seeks incompetent testimony and not the best evidence.

Ans. I confronted it with the official records of baptisms as kept in the Church of Our Lady of Monserrette at Havana, Cuba, and found it to be a true and correct copy of the entry showing the baptism of Recardo Garcia Marcos.

572 Ques. If each of the questions asked you with reference to the official character of the register with which this paper was compared and its custody and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, were asked you with reference to this paper, would your answers be the same, excepting only as to the time of the verification and the place where the official record was found.

Objection:

Counsel for defendant urges the same objections to each of the questions and answers to this paper as were urged as to the questions and answers referred to in said Exhibit No. 1, as if same questions were here repeated.

Ans. They would be, for the manner of verification was made in the same way.

Ques. Your answers being the same that you would give to questions asked as to Exhibit No. 1, with reference to the official character of the register with which this paper was compared, its custody and what you did to verify the same, which you gave to Exhibit No. 1, state whether or not this is a true and correct copy of the original entry as it appears in the official register as recited in said paper.

Objection:

Counsel for defendant objects to the question, on the ground that it seeks incompetent testimony and not the best evidence.

Ans. From my investigations I can swear that this paper is a true and correct copy of the original record of the Church of Monserrette in the City of Havana, showing baptism of Recardo Garcia Marcos.

Ques. Is the seal stamped on this certificate, the official seal of the Church of Monserrette?

Objection:

Counsel for defendant object to that question, on the ground that there has been no foundation laid for same, that same seeks incompetent evidence and not the best evidence.

573 Ans. The stamp appearing on this paper is the official seal of the Church of Monserrette of Havana, Cuba.

Subject to the stipulations made as to the testimony the witness would give as to the official character of the register with which this paper was compared its custody and the manner in which the same is verified, excepting as to the place where the register was found, this paper is offered in evidence as Complainants Exhibit No. 17.

Objection:

Counsel for defendant urge the same objections to the admission of this paper in evidence described as Exhibit No. 17, as were urged to the paper above described as Exhibit No. 5.

Ques. Paper handed witness and he is asked to describe it.

Objection:

Counsel for defendant objects to the question, on the ground that it is immaterial and irrelevant, and that there is no foundation laid for same.

Ans. This is a burial certificate of Augustin Garcia, father of Recardo Genaro Garcia.

Ques. State what you did to verify that paper as a true copy of the official entry in the original register.

Objection:

Counsel for defendant objects to the question, on the ground that it assumes facts that have not been proven, and seeks incompetent testimony and not the best evidence.

Ans. I confronted it with the original entry as shown in the books of the burials of the Church of Espirite Santo in the City of Havana, and found it to be a true and correct copy of the death of Augustine Garcia, as it purports to be.

Ques. If each of the questions which were asked you as to the official character of the register with which this paper was compared and its custody and the acts done by you to verify the same which were asked you with reference to Exhibit No. 1, were now asked you with reference to the paper you hold in your hand, would your answers be the same as you gave with reference to Exhibit No. 1, excepting only the place where the original record was found and the time of its verification.

574 Objection:

Counsel for defendant urges the same objections to the questions and answers with reference to this paper, as were urged with reference to Exhibit No. 5, as if the same were repeated here.

Ans. They would be, for the verification was made in the same manner.

Ques. Upon the answers that were given, please state whether or not that this paper is a true and correct copy of the original record of the entry in the church named in the certificate of the burial of Augustine Garcia.

Objection:

Counsel for defendant object to the question, on the ground that no foundation has been laid for same and that it seeks incompetent testimony and not the best evidence.

Ans. From my investigations I can swear that the paper I have before me is a true and correct copy of the official entry in the original record of the Church of Espirite Santo in the City of Havana.

Ques. Is the seal attached thereto the official seal of that church.

Ans. It is the official seal of the church in question.

Subject to the stipulations made as to the testimony the witness would give as to the official character of the register with which this paper was compared and its custody and the

acts done by him to verify the same, this paper is offered up in evidence as Complainants Exhibit No. 18.

Counsel for defendant objects to the admission of this paper described as Exhibit No. 18, on the same grounds that were urged as to the admission of the paper described as Exhibit No. 5.

As to the form adopted by agreement to save time in repeating the questions to prove the verity of each of the documents offered and filed as Exhibits 2 to 18, by each in question was adopted to cover by one question the many questions asked with reference to Exhibit No. 1, the counsel asks the witness if he can state as to each of the Exhibits Nos. 2 to 18, inclusive,

575 that the register with which he compared those several papers was the official register of the church which he named, as the church register with which he compared each of these papers, excepting only to one Exhibit which was a copy of a Court Record, and that these several registers were presented to him by the custodian of the church therein.

Objection:

Counsel for defendant objects to the question, on the ground that the proper foundation has not been laid for same, and that the testimony is incompetent and not the best evidence.

Ans. In each case the register with which the documents were compared was the official record of the church and presented to me by the official in charge of the church, as the official register of the church in question.

As to all these Exhibits Nos. 1 to 18, which you testify are true and coreet copies of the official entries of the original records as recited therein and as they purport to be, state whether or not you now say that each of said documents except that part of each which is a certificate added thereto is and all of said documents are true and correct copies of the several official records of the same.

Ans. The certificates were not a part of the official records but the parts in of the instruments, except the certificates, are true copies of the originals.

EUGENE M. SANCHEZ.

576 In the Circuit Court of the United States for the Southern District of Florida in Chancery.

Enrique del Pozo y Marcos, et al., Complainants,
vs.
Wilson Cypress Company, Defendant.

It is agreed by and between counsel for the complainants and the defndant that the testimony of the witness, Eugene M. Sanchez, called by the complainants, may be taken down by a stenographer agreed upon, the witness being first sworn by a notary public, and that said testimony shall be reported by the Master as if taken before him, and that no objection to the said testimony shall be taken or made based upon the fact that said testimony was not taken in the presence of the Master; the object of this agreement being to avoid going to Kissimmee before the Master who is there in attendance on the Circuit Court of Florida for the 7th Circuit.

JONES & JONES,
W. W. DEWHURST,
Solicitors for Complainant.
COOPER & COOPER,
& E. E. HASKELL,
Defendants Attorneys.

577 MASTER'S REPORT CONTINUED.

U. S. Court.

Wilson Cypress Co.
vs.
Marcos, et al.

And on December 29th, A. D. 1910, at ten o'clock A. M. at Orlando, Orange County, Florida, the taking of testimony in said cause was resumed, pursuant to notice theretofore duly given, and thereupon the following testimony was taken:

(There being present, Messrs. Jones and Jones and W. W. Dewhurst, Esq., of counsel for complainant, and Charles Cooper, Esq., of counsel for defendant).

One B. M. ROBINSON was called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

Q. State your name?

A. B. M. Robinson.

Q. Do you hold any official position in Orange County, Florida?

A. I do.

Q. What is it?

A. Clerk of the Circuit Court of the Seventh Judicial Circuit in and for Orange County, Florida.

Q. Mr. Robinson, who was your predecessor as clerk?

A. J. N. Bradshaw.

Q. How long have you been clerk?

A. Since 1905.

Q. Did Mr. Bradshaw turn over to you the records of his office, the records of Orange County in the clerk's office, when you went into office?

A. Well, there was no formal turning over, I was the deputy from 1891 up to 1905, and when I qualified I assumed possession.

Q. Are you familiar with the records of that office?

A. Yes.

Q. You have been in that office for how many years, since 1891?

A. Yes, sir; as deputy and as the clerk.

Q. Do you know who preceded Mr. Bradshaw?

A. Yes, sir.

Q. Who preceded him?

A. A. D. Shine. In fact, I know since 1874, Mr. Cooper.

Q. Do you know, Mr. Robinson, anything as a matter of local history in this county, and as a matter of tradition handed down from one clerk to another, do you know anything about the destruction of the court-house of Orange County by fire, and the destruction of the records in the court-house at that time?

578 A. Well, I don't know, sir, of my own knowledge or anything of that kind. I know that when I came here in 1874 it was reported that the court-house and the records, except one record book which is known as "Vol-

ume D," were destroyed. What year it was I don't know, and I have never known any one who could say positively, but it was somewhere in '68 or 69 or something like that.

Q. Have you ever heard that fact contradicted in this county?

A. That it was burned?

Counsel:

Yes.

A. Oh, no.

Q. Is that a matter of general knowledge in this county?

A. To the people of the time of my settlement here it was. I don't know whether people who have come here recently know anything about that.

Q. Mr. Robinson, will you please state whether there are in existence any of the tax assessment rolls or any records of tax sales, and the proceedings in and about tax sales in your office, prior to the year 1868?

A. I know of nothing prior to 1868. There is an assessment roll of 1868.

Q. Of 1868, you mean that is the earliest in your office?

A. Yes, sir.

Q. There are no records in your office relating to or affecting assessments for taxes or sales for taxes prior to that year?

A. I know of none.

Q. What is the nature of the instruments in the book referred to as "Volume D"?

A. Why, it is miscellaneous records, bills of sale, chattel mortgages, mortgages, deeds and other things. In those days they didn't have separate volumes for mortgages and for deeds and for miscellaneous matter.

Q. There are no tax rolls or assessments or records of tax sales of matter of that kind in there?

A. In "D."

Counsel:

Yes.

A. I have never read, Mr. Cooper, from lid to lid of Volume D. I have examined the index and there is nothing

under the head of tax sales or tax assessments or anything that would be covered by such an index as that in
579 Volume "D."

One WILLIAM MARTIN was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. What is your name?

A. William Martin.

Q. Do you hold any official position in Orange County?

A. County Judge.

Q. Judge, do you know of anything as a matter of local history of Orange County, or as a matter of tradition in your office, with reference to the burning or destruction of the Orange County court-house and records of the court?

A. I have heard that the court-house was burned and that most of the records were burned.

Q. About what time, sir?

A. I don't know what time that was, Mr. Cooper.

Q. You don't know the year?

A. No; I do not know the year. I can tell you what the farthest back record in my office is.

Q. What year is that?

A. April, 1869.

Q. Are there any records of the County Judge's office in existence anywhere else that you know of?

A. No, sir.

Q. Is the fact of the destruction of this court-house, Judge, a matter of general local knowledge in this county?

A. Yes; I think it is. Everybody knows it, that is, everybody has been told about it.

Q. You stated that most of the records were destroyed. Do you know what records were not destroyed, if any?

A. I only know by what has been told me I have heard that one deed book was saved. That's all.

Q. You don't know of any other records that were saved?

A. No, sir; I do not.

Q. Do you know where the County Judge's records were kept at that time?

A. Well, I can't say I know that. I think they were kept in the clerk's office, that is, all my old records show that they were. Hughey, as clerk of the Court, signed them as clerk.

580 Cross-Examination.

By Mr. Dewhurst:

Q. Have you any personal knowledge as to where the County Judge's records were kept?

A. No, sir.

Q. Have you any personal knowledge as to what records of the clerk's office were destroyed?

A. No, sir.

Q. You say it is a matter of tradition that the court-house was destroyed. Is that any matter of tradition as to what records were destroyed?

A. Why, I have heard that all the records except one book were destroyed. That is what I have been told.

Q. Who told you?

A. That I couldn't tell you. I have heard Mr. Robinson say so, and I think I have heard other people say so. I couldn't tell you who.

One C. A. BOONE was then called as a witness for the defendant, and, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Cooper:

Q. What is your name, please, sir?

A. C. A. Boone.

Q. What is your business, Mr. Boone?

A. I am city clerk at the present time.

Q. How long have you been in this county, Mr. Boone?

A. Forty years last June.

Q. Will you please state, Mr. Boone, what you know as a matter of local history in this county with reference to the destruction by burning of the court-house of Orange County and the records of the county in the court-house?

A. Well, it is generally understood and known that the court-house was burned two years before I came here.

Q. Before you came to Orlando?

A. Yes, sir.

Q. Did you live in the county at that time?

A. No, sir; I came in 1870, and the court-house was burned, so I was told, two years before. My father was—my father-in-law was clerk of the Court when I came here and had been for a number of years.

Q. What was your father-in-law's name?

581 A. J. P. Hughey.

Q. Did he give you any information in reference to that fact?

A. Yes, sir.

Q. State what that was?

To which question complainants, by counsel, object, on the ground that same calls for purely hearsay testimony.

Q. Go ahead Mr. Boone and state it.

A. I worked in the office with him for about seven years and, of course, I observed that there were no old records there except one old book, an old deed book. In our conversations it was talked about frequently, and he told me a number of times about the fire, and about the court-house burning, and the reason that there was the only book saved, that he had that down at his home, had carried it down to his house and the other records were destroyed.

Q. You worked in the clerk's office, then, for seven years?

A. Yes, sir.

Q. That was a matter generally known and spoken of in the clerk's office?

A. It was generally understood and talked over in those days. At that time we were in a new building, a small frame structure.

Q. What year was the court-house destroyed, you say, Mr. Boone?

A. I was told it was about two years before I came to the state.

Q. You came in 1870, you say?

A. I came in 1870.

Mr. Cooper:

Solicitors for the defendant request that the Court take judicial knowledge of the fact, as a matter of local history of Orange County, forming a part of the history of the State of Florida, that in or about the year 1868 the court-house of Orange County containing the public records of Orange County, in Orlando, Florida, was destroyed by fire, and that all of the records of the county except one volume of miscellaneous records of deeds, mortgages, bills of sale, chattel mortgages and instruments of that nature, were destroyed, and that there are no records of the said county prior to the year 1868 or '9, and that there are no records of any tax assessments or tax proceedings of the said county, or tax sales or any matters connected therewith prior to the year 1868, in the

582 public records of the said county.

The taking of further testimony in said cause was then continued without day, subject to further notice.

583 In the United States Circuit Court in and for the Southern District, Florida.

Marcos

vs.

Wilson Cypress Co., a Corporation, etc.

Mrs. Mabel Johnson, being first duly sworn as stenographer to take testimony in said Court, on this the 11th day of January, A. D. 1911, at Sanford, did proceed to take testimony in said cause, there being present, Messrs. W. W. Dewhurst, J. H. Jones on behalf of complainant, and Messrs. E. E. Haskell and C. P. Cooper on behalf of defendants.

Thereupon, Mr. F. H. WILSON, being first duly sworn, testified as follows on behalf of the defendant:

Q. What is your name?

A. F. H. Wilson.

Q. What is your business?

A. Sec'y, Wilson Cypress Co., the defendants in this case.

Q. Mr. Wilson, I have here an instrument purporting to be a certified copy under certificate of B. M. Robinson, clerk

of the Circuit Court, Orange County, of the instrument purporting to be a tax deed from John Simpson, sheriff and ex-officio tax collector of Orange County, Florida, to John Starke, dated July 5th, A. D. 1852, 5,408 acres of land, situated as follows:

In Section 37, Township 19, Range 28, in the County of Orange, State of Florida, being a part of Theresa Rodrigues' grant, taken from the records of Orange County, Book "D," page 277 and 278, June 27th, A. D. 1855. Will you examine that deed, Mr. Wilson, and state whether or not the
584 Wilson Cypress Co., the defendant, has in its possession, custody or control, the original deed from which that record was made?

A. No, sir.

Q. Do you, as secretary of that company, know that that company has not or does not know where the original deed is?

A. I, as secretary, know they know nothing about it.

Defendant offers that deed in evidence as Defendant's Exhibit ....

Complainant objects to the introduction of the deed in evidence, on the ground that it is irrelevant, immaterial and incompetent, that the instrument purporting to be the deed was executed while the lands were claimed to be a part of the public domain, claimed by the United States. That it purports to be sold under an execution against all the right, title and interest of Theresa Rodrigues, upon default in the payment of taxes from the years 1845 and including the year 1851, while the testimony already advanced in this cause clearly shows that there was no tax assessed against the land described in this deed or against Theresa Rodrigues for any of the years 1845 to 1851, inclusive; because it is incompetent as a copy, same never having been proved for record or duly recorded. Because the execution of the original has never been duly proven. I make further objections that there was no statute authorizing the sale of land for the non-payment of
585 taxes of preceding years, except the year immediately preceding date of sale. The land was not surveyed, had not been surveyed and laid off in township, section and range in the years when the taxes are set out in deed as being

in default. Plaintiff objects to the certificate of the clerk as the recitation therein, as copy of the deed from John Simpson, sheriff, as conclusion of law and also a conclusion of law that the same was recorded in the book named.

Q. I have here a paper being a certified copy from B. M. Robinson, clerk of the Circuit Court, Orange County, Florida, of certain items taken from the Tax Sale Book of said county, for the year of 1879 for the taxes of 1878, said items showing certificates numbered 100 to 101, describing property as follows:

Certificate #100 S.W. 1/4 of S.E. 1/4 of Section 34, Township 20, range 31, 40 acres assessed to George C. Powell; also, certificate # 101 covering the east 1/2 less 40 acres sold to Smith & Clifford, Section 9, Township 19, Range 28, 260 acres, assessed to Geo. W. Powell.

Would you please examine that certified copy and state whether or not those original certificates mentioned in that copy are in the possession, custody or control of the defendant, the Wilson Cypress Co.?

A. They are not.

586 Q. Do you know whether these certificates have ever been in the possession of the company?

A. They have not to my knowledge.

The defendant offers in evidence the said certified copy of said tax certificates Nos. 100 and 101, above described.

Counsel for complainant objects to the introduction of said paper in evidence, on the ground that it is irrelevant, immaterial and incompetent, that the certificate thereto does not set out that it is a part of any official record, that it is an attempt of defendants to show title of defendants, that the period covered by said certificates was a time when the lands in controversy in this suit were claimed by the United States to be a part of the public domain, that the Court will take judicial notice that the lands in controversy, being a Spanish grant, are surveyed with the section number above 36. The lands described in this certificate purport to be of section numbers which the Court will take notice are within the numbers used in surveying lands that are a part of the public domain, which were never within any private grant. That the certificates are of a date prior to the issuance of a patent for lands.

which were never granted by absolute grant prior to the change of flags. Further, because as to the alleged certificate 100, the township and range set out in the alleged copy is shown not to be within the township and range in which is located the land in controversy. The land in controversy is Sec-
587 tion 37, Township 19, Range 28, and Section 41, Township 19, Range 29, while on the face of the alleged certificate it appears that the lands therein described are located according to the surveys of the public lands and are not in the lands in controversy as recognized by the United States patent. There is not sufficient proof that the original certificates are not in the custody of the person, who by law is required to have the custody of such certificates, and that the witness offers to prove the fact that the defendant has not the custody of the original certificates is not competent proof that the original certificates are not in the proper custody.

(Paper offered in evidence now filed as Defendant's Exhibit ....)

Q. Mr. Wilson, will you please examine this paper purporting to be a certified copy of tax deed from the State of Florida by T. J. Shine, clerk of the Circuit Court, Orange County, to M. C. Crumpler, dated the 9th day of July, 1887, including among other lands the West 1/2 of the N.E. 1/4 of the S.W. 1/4 of Section 16, Township 19, South, Range 28, East, 20 acres, under certificate of B. M. Robinson, clerk of the Circuit Court of said county.

Will you please examine this certified copy and state whether or not the original deed from which that record was made is in the custody, possession or control of the Wilson Cypress Company, the defendants in this case?

A. It is not.

Defendants offer in evidence certified copy of tax deed last above mentioned, as Defendant's Exhibit ....

588 Counsel for complainant objects to the introduction of the paper in evidence, on the ground that the same is irrelvant, immaterial and incompetent, that same purports to be a deed executed for the non-payment of taxes levied and assessed on the lands therein described, in the year 1885, which

were alleged to be in default, and from the testimony in this case it appears that the lands in controversy at said date were a part of the public domain, and were so claimed by the United States, that the land in controversy at said date was an inchoate Spanish grant, which was not patented until the year 1895, and were not subject to taxes, because it appears on the face of the instrument that the lands were sold according to subdivisions of lands which were surveyed as a part of the public domain, and not as a private grant; that the lands in controversy could only have been legally described by some section number above Section 36; because it is an attempt to show title of either the plaintiff or defendants in this suit at a date prior to the relinquishment of the United States of its titles to the land in controversy.

By Mr. Haskell:

Q. Is it or is it not a fact that you are custodian of all the deeds of the defendant company as secretary.

A. I am.

(Defendant offers in evidence, under a certificate of the commissioner of agriculture of the State of Florida, a certified copy of the map of the Theresa Rodrigues grant, Section 37, Township 19 South, Ranges 28 and 29 East, and the public domain for lands contiguous thereto in Township 19, Range 28 East, as recorded in the office of the said commissioner of agriculture, together with the certificates and notes shown thereto.

Said paper was filed in evidence as Defendant's Exhibit ....

589 It is now agreed of record by counsel for complainant and defendants, respectively, that the Marcellus A. Williams mentioned in the foregoing exhibit as deputy surveyor of the surveyor general, Florida, in January, 1851, was in fact such a deputy at that time and the said Marcellus A. Williams is now deceased.

The defendants offer in evidence Report No. 3 as shown on page 571 of Volume 4 of Gales & Seaton's Editions of the American State Papers, being the entire page so numbered 571, with all marginal notes thereon shown, including the

Theresa Rodrigues claim No. 22 and which page is herein set forth as follows:

590 Said page No. 571 is offered as Defendant's Exhibit No. ....

Counsel for complainant objects to the introduction of the copy of said page in evidence, on the ground that the same would be misleading and that same is irregular, immaterial and incompetent for the purpose for which introduced and that upon the face of said page 571 the case number 22 appears to be a part of the report not embraced in report No. 3 and to which the heading of said report No. 3 does not apply and that the last six cases, numbering from 21 to 26 inclusive printed on said page 571 are not included in the class of cases which are recited as being the subject of the report and are not of the class of cases which are embraced in the cases numbering from 1 to 20 inclusive; that it is apparent upon the face of the report cases 21 to 26 inclusive that no royal title was ever issued and that no survey was ever made of the lands embraced in case 22, of which Theresa Rodrigues was a claimant. That the statement which precedes the numbered cases found on this page, is shown by the testimony in this case not to apply to the case of Theresa Rodrigues No. 22 and that the last 6 cases mentioned on said page are shown by the heading over them to be no part of Report No. 3 and not to be embraced within the statement made as to the preceding cases by the title which precedes the said six last cases, such title being the cases reported in this section No. .... and that as to these six last cases the statement made as to the preceding 20 cases has no application and was not intended to have by the commissioners signing the said report, and that the statement

591 made as to the first twenty cases printed on said page which same are founded on patents and royal titles from the Spanish Government as shown by the proceedings had upon claim No. 22 as well as upon the other five claims numbered from 21 to 26 inclusive, to have no application to these last six claims and is shown by such proceedings in the body of the minutes relating to the proceedings of the commissioners relative to these claims, not to apply to the said six claims, which last six claims are shown by the minutes of the said

commissioners relating to each of said claims, to be claims founded upon inchoate grant by the Spanish Government. Complainant further objects because the Court is asked to take additional notice without the record that case No. 21 on said page 571 has been declared by the Supreme Court of the United States to be an inchoate title and rejected as such.

Case No. 25 has also been declared by the Supreme Court of the United States to be an inchoate title and rejected, and because cases Nos. 25 and 26 on said page are identical cases and therefore Case No. 26 was declared by the Supreme Court of the United States to be an inchoate grant. The complainant reserving the right to refer to the several volumes of the Supreme Court of the United States to sustain this objection.

Counsel for defendants now offer to be filed in evidence on their behalf, the letter dated January 21, 1826, of Davis Floyd and W. H. Allen, the commissioners as to claims in East Florida, as set forth upon page 563-64 of the Volume of American State Papers, heretofore referred to, in accompany-
392 ing this said report No. 3 just above offered in evidence.

Counsel for complainant objects to the introduction of the copy of the said letter in evidence, on the ground that while copies of the proceedings of the commissioners as provided in the American State Papers are competent evidence, copies of their conclusions upon questions of law are incompetent and are not made competent by the fact that they are published in such report, and further objects on the ground that the last six cases printed on page 571 of said volume under the heading "Cases Reported This Session", shows that those six cases are not comprehended in the claims referred to in said letter, dated January 21st, 1826, and further that this letter is irrelevant, immaterial and incompetent and object to the right of the defendants to introduce to testimony as to Defendant's Exhibit .... with reference to certificates and indorsements thereon and its connection with the defendant's title.

(Defendants here rest.)

Under the right reserved at the time the testimony was taken, that the counsel for complainant might present further objections to the testimony taken in this cause in behalf of the defendants, counsel for complainant now makes the following objections: Counsel objects to introduction of evidence of Exhibit No. 4, alleged deed from Partin to Mills, that same is immaterial and incompetent because there is no authority in law for the execution of the tax deed by a tax collector, that the said alleged deed is in no way con-
593 nected with the title to the land in controversy, because the said alleged deed recites that the land therein described was levied upon as the property of John Starke and sold for the alleged default to the said John Starke to pay taxes theron, because at the date in which said taxes are recited in said deed to have been in default, the lands therein described were a part of the public domain of the United States, and because at said period the lands therein described were claimed by the United States to be a part of the public domain of the United States, and because the said alleged deed attempted to convey all the interest of John Starke "and others", the same being insufficient description of the instrument and the lands therein described, admit to be conveyed to effect the title of the complainants or their ancestors or predecessors in title.

Complainants object to the introduction in evidence of Defendant's Exhibit ..... deed from the Florida Land and Colonization Co. to the Wilson Cypress Co., because such alleged deed bears on its face to have been made by virtue of power of attorney, the execution of which power of attorney has not been sufficiently proven to admit the power in evidence.

Complainants object to the Defendants' Exhibit 20, the alleged tax deed to "Krijee", that the same is immaterial and incompetent, that same attempts to show title out of either of the parties to this suit, that the same was made at a period when the lands therein described were a part of the public domain of the United States, that the same was made
594 at a period when the lands therein described by the United States were claimed as public domain, part of the United States.

Plaintiffs object to Exhibit 21, tax deed to Buffum, upon the

same ground set out in their objection to the introduction of No. 20.

Complainants object to offering in evidence of Exhibit No. 8, tax deed to Sanford, upon same ground set out in objection to No. 20 and also upon the further ground that the said deed does not sufficiently locate the lands as being the lands in controversy, and is void on its face.

Complainant objects to Defendant's Exhibit No. 9, deed from Dawes & Thompson, trustees, to the Florida Land and Colonization Company, dated December 2, 1889, because by the Defendant's Exhibit No. 13, deed from Sanford to Dawes & Norris, trustees, it appears that the conveyance to said trustees to the title which they held, if any, was taken by three trustees, and that the said alleged deed, Exhibit No. 9, purports to be executed by but two of the three trustees, which form of execution complainant contends is not sufficient to convey any title which the three trustees may have received, if any, by the deed from Sanford.

Complainants object to the Defendant's Exhibit numbers 10 and 11, powers of attorney from Sanford to Rand, that the execution of each of said powers of attorney have not been proved as in the manner required by law.

595 By agreement of counsel for the respective parties, defendant shall be allowed to introduce such testimony as he may be advised with reference to the above objections. This right is confined to the new objections which have been made by the complainants at this hearing, upon complainant's counsel indicating which are new objections and striking out which are not.

J. P. OWENS, being first duly sworn, testified as follows on behalf of the complainant:

Q. What is your name?
A. J. P. Owens.
Q. Where do you reside?
A. Tampa.
Q. Please state where you were residing in 1895 and 1896?
A. I resided in Cassia, Lake County, Fla.
Q. Were you acquainted with Col. J. H. G. Martin of Washington City?
A. I was.
Q. Where did you see him?
A. He came to my house and stayed for more than a week.
Q. At what time?
A. 1896, to the best of my knowledge and recollection.
Q. Do you remember whether it was the last or the first part of the year?
A. First part I think.
Q. What was his business there and in whose interests did he come?

596 Defendant's counsel objects unless witness can state of his own knowledge.

A. He came there, he told me, to look after a Spanish grant, known as the Rodrigues grant.

Defendant's counsel objects to the answer, as it indicates hearsay.

Q. What did he do after he got there?
A. He and I drove around in a horse and buggy and looked over the grant some two or three times at the time he was staying with me.
Q. How much of the grant did you cover in your investigations?
A. We only road [rode] through part of it. We went over two or three different parts of the grant where we could get in a buggy. It was very rough.
Q. How many times did you go?
A. To the best of my knowledge three times.

Q. Were you with him on each occasion?
A. Yes sir.
Q. You went round the land and showed it to him?
A. Yes, I showed him.
Q. What land did you point out?
A. I showed him this grant known as the Rodrigues grant.
Q. What grant was it you pointed out?
A. The Theresa Rodrigues grant.
Q. Do you remember the township and range of that grant?

597 A. No sir, I do not.
Q. Where were you living at that time?

A. Cassia, about 1 1/4 miles from the nearest part of this grant.
Q. From what direction from Cassia?
A. South and southwest.
Q. That is the property you were examining?
A. Yes sir.
Q. Is this the same property afterward claimed by the Wilson Cypress Company?
A. I understand it is.
Q. Is this also claimed by the Powells?
A. Yes sir.
Q. About what size is the grant? How many acres in the tract?
A. I don't know how many thousand acres, but it is several miles long.
Q. Lying southeast of Cassia?
A. No sir, south and southwest.
Q. What part of the grant did you go over?
A. We went over the western part and the southern and eastern part, the part that we could get to in a buggy.
Q. Why not over the other part?
A. We could not go over part of it in a buggy and he was very fleshy and couldn't walk much.
Q. What do you mean by "too rough"?

Defendant's counsel objects to question as immaterial.

A. There was a great many palmetto roots, creeks, etc.
Q. Please state further about Mr. Martin's ask-

598 ing you to look after the grant for him.

Counsel for defendants object to the question as assuming facts which have not been proven and object to the testimony unless the witness knows of his own knowledge.

A. When he went to leave he said he wanted me to look after the grant for him and I told him all right and he put me in charge before leaving.

Q. What did you do in the execution of this authority?

A. I went over the lands at different times. At one time there was some parties cutting cedar and I ordered them off the place.

Q. Did you do that as agent?

Counsel for defendant objects to the question, on the ground that it is assuming facts not proven.

A. I did so because I considered it my business?

Q. By what authority?

A. By authority he gave me.

Counsel for defendant objects to the last answer on the ground that counsel is leading witness.

Q. Did you do anything else in regard to ordering people off the grant?

A. No sir. I only looked after the timber.

Q. What kind of notice did you give?

Counsel for defendant objects on the ground that the counsel is leading the witness and the question assumes facts not proven.

599 A. A notice stating that it was private land and warning people not to cut any timber.

Q. What kind of evidence did you give the people to show that you were representing these Rodrigues heirs through Col. Martin, if any?

Counsel for defendants object to the testimony in assuming facts not proven, misleading, improper and irrelevant.

A. I posted three notices at different parts on the land—on the western, southern and eastern parts.

Q. Please describe the contents of the notices as nearly as you can.

Counsel for defendants object to the question, on the ground that it seeks to elicit evidence which is not the best evidence, because it seeks testimony that is immaterial, that it does not prove or disprove the issues involved in this case. That it is without proper foundation.

A. I just warned anybody from cutting timber off this property.

Q. State as nearly as you can the time you put up these notices.

A. To the best of my knowledge in the fall of 1896.

Q. State, Mr. Owens, what occurred between the time you first represented Mr. Martin and the fall of 1896 relative to this property.

Counsel for defendants object to the question as improper, misleading and assuming facts which have not been proven, that it is incompetent, immaterial and irrelevant.

600 A. I don't remember anything special more than what I have already mentioned. We corresponded about every week or two. I ordered three parties off during that time, cutting timber.

Q. What was the nature of this land. Cultivated or uncultivated?

A. Wild hunting land to go hunting and fishing through.

Q. How often were you on the land.

A. One [once] every two weeks.

Q. Any improvements?

A. No sir, none that I knew of.

Q. State whether or not there was anyone else in apparent occupancy at the time you are testifying about.

A. No sir.

Q. In testifying there was not, from what do you base your testimony, from actual observations?

A. Yes sir.

Q. Please state how long this condition of there being no

one in occupancy of this property existed from the spring of 1896, to your knowledge.

A. There was no one else during the time that I was looking after it, that was between one and one-half years.

Q. Please state whether any former occupants had moved away or not, of your own knowledge.

A. Not to my knowledge. I don't know whether anyone else ever looked after it before.

Q. Had some of this land been previously occupied?

Counsel for defendant objects to the question as leading to facts which witness would not testify.

601 A. It had. The Powell mill had been on it.

Q. Was any of them still living there at this time?

A. No sir.

Q. How long since?

A. For several years.

Q. Was there any improvements there at the time they left there?

A. They put a mill on it, and built some little houses, I think.

Q. Please state whether or not these improvements had been abandoned or not?

A. They had, yes, sir. Mr. Powell and they all left.

Q. Is that you mean when you say the land is wild and uncultivated, and unoccupied?

A. Yes sir.

Q. Please state whether the people in that vicinity kept any cattle?

Counsel for defendant objects to the question as immaterial and irrelevant.

A. They kept cattle and hogs both.

Q. Please state whether the property was open as a range?

Counsel for defendant object to the question as immaterial and irrelevant.

A. It was.

Q. Did the cattle of the people living in that neighborhood range over this property or not?

Counsel for defendant object to the question as immaterial and irrelevant.

602 A. They did.

Q. Please state whether this range of cattle that you have testified to was restricted by anything?

A. Well, not that I know of. They didn't damage anything.

Q. Was this range of cattle and hogs you have testified to, over the entire grant?

Counsel for defendant object to the question as immaterial and irrelevant.

A. Yes sir, most of it.

Q. What part did they not range over?

A. Very little. The eastern part they didn't go over much.

Q. Why didn't they go over that?

A. The grass was not good.

Q. State whether there was any fence to restrict their range or any part of it.

A. No fence to the best of my knowledge to restrict them.

Q. Mr. Owens, you testified that you looked after this property for Col. Martin for a period of time. Please state if you can, of your own knowledge, if the grant was occupied by any other person during that time.

A. No other person on it during the time I was looking after it.

Q. You were constantly over the property?

A. Yes sir.

Q. What period of time did that cover? Commencing when?

603 A. As I stated before, to the best of my knowledge from 1896 to sometime in 1897.

Cross-Examination.

By Mr. Cooper:

Q. Mr. Owens, did you know a man by the name of Ed. Thomas was on the grant about that time?

A. No sir. I knew Thomas. I had seen him a few times.

Q. Don't you recollect he was on the grant about that time?

A. I think it was before. I never saw him on it while I was looking after it.

Q. Mr. Owens, did you know two negroes named Anderson?

A. Yes sir.

Q. Were they the parties cutting the timber that you ordered off?

A. Yes sir.

Q. Mr. Owens, you say this grant was about 1 3/4 miles from you?

A. To the nearest point.

Q. How far by road do you recollect?

A. By road it was something over two miles.

Q. What do you mean by "nearest point"?

A. The nearest way there. The road didn't go right up to it.

Q. How far did you have to go by road to get right on the grant?

A. Some three miles from my house.

Q. Mr. Owens, was not this grant with reference to which you have testified, known as the Powell grant?

604 A. Some called it that, and after Mr. Martin came down some of them called it the Rodrigues grant. The negroes called it the Powell grant.

Q. Mr. Owens, do you know when Mr. Thomas went on that property?

A. No sir, I do not remember.

Q. Do you know when he left?

A. He left at night. I do not remember the time.

Q. You do not remember the date?

A. I do not remember the date.

Q. Do you remember who took his place?

A. No sir.

Q. You never knew a man by the name of McIntosh?

A. I knew a man by the name of McIntosh.

Q. Didn't he live on the grant?

A. No sir. His place was something like 1/2 mile from the grant.

A. Do you remember whether he was ever in charge of the grant?

A. No sir.

Q. Do you know Chas. Boykin?

A. Yes sir.

Q. You didn't know he was in charge of the grant?

A. I didn't at the time I was looking after it.

Q. When was he in charge?

A. I didn't know that he was ever in charge of it. I heard that he was after I went. I moved away to the East Coast and after that somebody put him on, I heard.

Q. When you say you moved off you don't mean you moved off the grant?

A. No sir, I never lived on it. I meant moved out of the county. I didn't live on it. My home was about

605 1 1/4 miles from the nearest point of the grant.

Q. Mr. Owens, at the period you claim to have had charge of the grant, did you ever order off the said grant a man by the name of McIntosh?

A. No sir, I never saw Mr. McIntosh on the grant.

Q. Didn't you ever order anyone off except the negroes?

A. No sir. They were the only ones interfering with that I knew of.

Q. Mr. Owens, is it not a fact that you knew Mr. Rand, during the time you say that you were working for Mr. Martin, was agent of parties who claimed to own this grant?

Counsel for complainant object to the question on the ground that it is not a proper cross-examination, not being based upon any question brought out in the direct examination.

A. I understood that he was agent for the Sanford Land Company.

Q. Mr. Owens, you state that you went on the grant about every two weeks. You did go all over two weeks. Would you drive through?

A. Sometimes we drove through, sometimes we walked. Sometimes we would go fishing and hunting and then would look after it at the same time. Can't drive over it all.

Q. Mr. Owens, is it not a fact that upon different occasions of this kind and the times that you have testified to, there was unmistakable evidence of former occupants and cultivations of

tracts of lands or cultivation in evidence about the mill you have testified?

606 A. No sir, not to my knowledge. We didn't consider it on the grant. I had been told that Smith & Clifford owned a portion of it.

Q. You don't know whether that was on the grant or not?

A. No sir.

Q. Near the mill that you have mentioned, were there not old fields and clearings and remains of old houses.

A. There had been. There had been some little, small houses built there. Some of them had burned down. We never really considered them at the time as being worth anything. At the time the Powell mill was running they had been occupied.

Re-Direct Examination.

Q. In your cross-examination you stated that you didn't know that Smith & Clifford land was a part of the grant. Will you explain what you mean by that testimony.

A. I say in regard to myself, that I didn't think that was on it. I understood that the company had sold a part of this land to Smith & Clifford, the piece of the grant where there had been an orange grove. The orange grove had gone down and I considered it worthless.

Q. Then, as a matter of fact, in testifying, it was not your intention to convey the idea that you had no doubt that the Smith & Clifford lands were a part of the Rodrigues grant?

A. No sir.

Q. If you can state any more clearly what was your meaning when you testified as above, please do so.

A. I don't think I can.

607 Re-Cross.

Q. What company was that you referred to when you said the company had sold part of the grant?

A. I understood that the Sanford Land Co. had sold it to Smith & Clifford years before.

Q. Do you know the boundaries of that grant?

A. I don't know accurately. I know about where they are. I am no surveyor.

Q. Mr. Owens, do you know you spoke of the company selling this land. Do you know whether or not it was generally understood that this company owned this land to sell?

Counsel for complainant object to the question on the ground that the period of time referred to in the question is indefinite and if it refers to the time testified to by witness it is irrelevant and immaterial, because at that date the land in question was a part of the public domain of the United States, was claimed by the United States to be a part of the public domain, and the title of the complainants and those under whom they claimed, was denied by the United States.

A. I don't know. Some claimed that the Sanford Company owned it, and some that the company I represented.

Re-Re-Direct.

Q. What do you mean by the company you represented?
A. I mean the Spanish heirs.
Q. Do you mean the Spanish heirs whom Col. Martin represented?
A. Yes sir.
Q. Where did you come from to attend this meeting?
A. I came from Tampa.

608 Mr. A. J. DRIGGERS, being first duly sworn, testified as follows on behalf of the complainants:

Q. What is your name?
A. A. J. Driggers.
Q. Place of residence.
A. Longwood, Fla. Ten miles south of here.
Q. Did you ever live in Lake County?
A. Yes sir.
Q. When and where did you live there?
A. The last place was at Seminole Springs or just south of it, in 1899.
Q. Can you place the dates about the time you lived there? When did you move there?
A. The last day of February, 1899.

Q. How long did you live there?

A. From then until September.

Q. Did you know of a tract of land known as the Rodrigues grant?

A. Yes. I lived just west of it.

Q. How far from it?

A. About 300 yards.

Q. What kind of property is that, Mr. Driggers, in regard to whether it is cultivated or uncultivated land?

A. Wild and uncultivated.

Q. Any fences upon it.

A. None that I ever saw.

Q. Have you been on the grant often?

A. Yes sir, very often.

Q. What took you on it?

A. I was on for the purpose of hunting and fishing.

Q. Were there any cattle grazing on it?

609 A. Yes sir, a great many cattle.

Q. Whose cattle were they?

A. I don't know.

Q. Just general cattle in the neighborhood?

A. Yes sir, probably, I think.

Q. The people you speak of owning the cattle, lived round there?

A. Yes sir.

Q. Did anyone live there? Was there anything to prevent the cattle from roaming over the grant?

A. No sir, not a thing.

Q. State whether or not they could roam over all of the grant.

A. Not all.

Q. Why?

A. There was a dense swamp, they could not get over it.

Q. That the only reason?

A. Yes sir.

Q. Then, Mr. Driggers, what in your testimony, that the cattle of the people living in the neighborhood were unrestricted?

A. Yes sir, unrestricted.

Q. Did you know John Woffud?

A. I used to know him.

Q. Where did he live?

A. At Cassia.
Q. At the time you speak of—during 1899?
A. Yes sir.
Q. Did you ever see him on the grant?
A. No sir.

610 Cross-Examination.

Q. Mr. Driggers, you used to call this the Powell grant, did you?
A. Yes sir.
Q. When did you go in?
A. February, 1899.
Q. It was called the Powell grant then?
A. We knew it as the Powell grant. It had the mill there.
Q. Where did you come from to be at this hearing?
A. Longwood, Fla.

Mr. J. O. FRIES, being duly sworn, testified as follows on behalf of the complainants:

Q. What is your name?
A. J. O. Fries.
Q. Where do you live?
A. Orlando, Orange County, Fla.
Q. What is your profession, Mr. Fries?
A. Civil engineer and surveyor.
Q. How long have you been a surveyor in Florida?
A. 39 1/2 years.
Q. Have you filled any public position as a surveyor?
A. Yes. County surveyor Orange County for sixteen years and of Brevard County 12 years and back to Orange County for about three years and have also been United States deputy surveyor of Florida since 1878.
Q. During these years have you had actual experience in Florida the thirty-nine years?
A. Yes sir.
Q. That is your profession?
611 A. Yes sir.
Q. Have you been called upon for expert testimony in the courts of the country?

A. Yes sir, several times.

Q. Are you familiar with what is known in Lake County as the Rodrigues grant?

A. Yes sir. I visited it first about 30 years ago and visited it again yesterday.

Q. What part of it did you investigate?

A. The southern part.

Q. Have you investigated the sections surrounding the southwest corner of the grant?

Counsel for defendant objects that the question is leading the witness.

A. To a certain extent.

Q. What do you mean by that?

A. In going out there yesterday I wanted first to make certain that the government corner of the sections were the same as I found them about 30 years ago. I find them in exactly the same condition as when the surveys were first made. I mean there were no timber cuts. The old marks were all there. The posts were all standing.

Counsel for complainant moves to strike out the answer of the witness on the ground that it is not responsive to the question, that the testimony is incompetent and that the witness states a conclusion without showing that he is competent to make such conclusion.

Q. What old surveys do you refer to?

A. Old government surveys?

612 Q. Have you made a recent survey of any part of that grant.

A. Yes sir, part of it.

Q. State what you found there?

Counsel for defendant object to the question on the ground that the witness is testifying that he surveyed a part of the land in question and does not relate to a particular part.

A. The west first mile of the south boundary of the Rodrigues grant.

Q. Do you know of any small house out there in the woods?

A. Yes sir.

Q. Do you know who claims that house?

Counsel for defendant object to the question as immaterial, irrelevant, unless the witness testifies of his own knowledge.

A. I don't know except by hearsay.

Q. Were you requested to locate the south line of the grant with reference to the small house spoken of in your testimony?

A. Yes sir.

Q. With reference to the south line of the grant, where is that small house located?

A. It is located 8 chains, 14 links south of the section line, and therefore south of the grant line, as described in the United States field notes.

Counsel for defendant moves to strike out the testimony of the witness on the ground that he refers to the U. S. field notes. That it is indefinite and means nothing.

613 [Q.] Please examine that Exhibit ..... being a map of the Rodrigues grant put in at this hearing by defendants.

Defendants object to testimony from Exhibit ....

Q. Was there any other small house in that vicinity?

A. None that I saw.

Q. Please examine this map and state whether it corresponds to the United tSates field notes used by you.

Counsel for complainants object to the question on the ground that it is vague and indefinite; that it seeks to elicit testimony for which there has been laid no foundation; that there has been no field notes in evidence and no indications of any; that it seeks evidence not the best evidence; that the best evidence would be the field notes used by witness and these should be introduced and compared with the exhibit in question.

A. It does so far as the tract I said I went over yesterday.

Q. How far was it from the north line of section 20, according to the point which you located as the southwest corner of the grant?

A. It was five chains and thirty-five links south.

Q. Did you find the northeast corner of section 20?

A. I did.

Counsel for defendant object to the question and answer as leading the witness.

Q. How far was the corner from the south line of the grant, measuring north and south?

614 Counsel for defendant objects to the question, on the ground that it assumes facts not proven.

A. Five chains, thirty-five links.

Q. Please state from your examination of the grant, if you are satisfied that the south line of the grant as laid out by the United States survey, runs north of the small cabin you have testified to.

Counsel for defendant object to the question on the ground that there is no identification of the survey in question; that there is not proper foundation for an expression by the witness, so that the testimony is irrelevant, immaterial and incompetent.

A. It does.

Q. How far north of the cabin?

A. Three chains, seventy-eight links.

Q. Do you or do you not, as an expert surveyor, say that the cabin is not on the grant?

Counsel for defendant object on the ground that it is indefinite, does not identify any ground, that it is immaterial and irrelevant.

A. It is not on the grant.

Q. Where is that cabin located with reference to public surveys?

Counsel for defendant object to the question; that it is immaterial; that it identifies no surveys.

A. It is in fractional north 1/2 of the northeast 1/4 of Section 21, Township 19, South of Range 28 East.

615 Q. Please state whether or not you found a large sulphur spring.

Counsel for defendant object to the question as leading; improper; indefinite.

A. Yes sir.

Q. Where located?

Counsel for defendant object to the question as leading; improper; indefinite.

A. It is located a few feet west of the east boundary of Section 21, same township and range as above, about eleven chains south of the section corner of the northeast corner of Section 21.

Q. How far south of the grant line?

Counsel for defendant objects to the question as assuming facts not proven; that it is immaterial and irrelevant.

A. Five chains, sixty-five links.

Cross-Examination.

Q. Mr. Fries, what do you mean when you say you surveyed the west first mile of the south boundary?

A. I mean I followed it.

Q. You followed it one mile east?

A. Yes sir.

Q. Where did you begin?

A. From the west boundary of the grant.

616 Q. Did you begin at the corner of the grant or section?

A. Grant.

Q. You say you were requested to go there. Who requested you?

A. Mr. Jones.
Q. He employed you?
A. Yes sir.
Q. In an official capacity?
A. I guess so.
Q. You don't know?
A. I went there as surveyor of Orange County.

Mr. SAMUEL ROBINSON, being first duly sworn, testified as follows on behalf of defendant:

Q. What is your name?
A. Samuel Robinson.
Q. Where do you live?
A. Orlando.
Q. Are you a surveyor?
A. Yes sir.
Q. How many years have you been in the practice of your profession in Florida?
A. Thirty years.
Q. Have you filled any public, official position?
A. I was county surveyor Orange County a number of years.
Q. Have you been called upon in the courts to testify as an expert surveyor?
A. Yes sir.
617 Q. Are you familiar with the property known as the Rodrigues grant?

Counsel for defendant object on the ground that it is indefinite; that it lays no foundation.

A. Yes sir.
Q. Where located, county and state.
A. Township 19, South, Range 28 East. I think in Lake County, Florida.
Q. Please state if you have surveyed any lines of this grant.
A. I have.
Q. Which?
A. A portion of the north line, the whole west line and

located where the south line should be for one mile over west side. Located where the south line should be running east from the west line, in my opinion.

Q. You state in your opinion. Please state if that opinion is based upon where the south line should be according to the United States survey?

A. It is according to their notes and distances given.

Counsel for defendants move to strike out the testimony, that it is vague, indefinite, immaterial, and irrelevant.

Q. It is in evidence that the southwest corner of this grant is five chains and thirty-five links south of the north line of Section 20. Is your opinion based upon such United States survey?

618 Counsel for defendants object to the manner of examination as entirely improper, leading, immaterial and irrelevant, that there is no foundation for the testimony.

A. My opinion is based upon actual measurement from the northwest corner of this grant measuring south 168 chains, as called for in the field notes of the survey of the grant in question, upon the measurement to the south line of the section in which the southwest corner of the grant is located, and finding that section to be in excess north and south, I added 81 links to the 168 chains so as to give its proportionate measurement south and to carry it far enough south so as to reach the point as the distance given in the field notes to the south corner of the section, and I ran a mile further and that is where the grant should be.

Counsel for defendant move to strike out the testimony; that there has been no foundation laid for it; that it is immaterial and irrelevant.

Q. What field notes do you refer to.

Counsel for defendant object to the question that it is immaterial and irrelevant.

A. The field notes that came from Washington.

Counsel for defendant move to strike out the answer that there is no foundation laid for it; that it is immaterial and irrelevant.

Q. Please examine that paper and state if those are the field notes you refer to.

619 Counsel for defendant object to the question as leading.

A. Yes, sir.

Q. Are the field notes contained in this paper the field notes you used in making the survey?

A. Yes, sir.

Q. Are you satisfield that you started at the correct point?

A. Yes, sir. By reason of running the section lines from a line just inside of grant, on the west side of either corner running clear through the grant, and by reason of running other small section lines and with the connections I made years before, adjacent to the grant on the west and south side.

Counsel for defendant move to strike out the testimony, on the ground that it shows on the face that it is incompetent, immaterial and irrelevant.

Q. Starting at the northwest corner of the grant and running south two and one-half chains, what did you find by actual survey on the ground.

Counsel for defendant objects to the question as leading to facts not testified to.

A. Starting at northwest corner and running south between 2 1/2 and 3 chains, I found the south line of Section 5, Township 19, Range 28.

Q. Running 80 chains more, what did you find?

620 Counsel for defendants object to the question, on the ground that it is immaterial and irrelevant, that it is leading.

A. Running 80 chains more, in the neighborhood of a mile, I found the south line of Section 8.

Q. Then running still further south 80 chains and five links?

Counsel for defendant objects to the question as leading.

A. Running approximately 80 chains south I found the south line of Section 17, Township 19, Range 28.

Q. Then, at what distance south of the south line of Section 17 did you locate the southwest corner of the Grant?

A. Six chains and forty-five links. I will say 6 chains and 48 links. I may be out in the matter of links.

Q. Did you find section line east and west between Sections 5 and 6, and between 8 and 17, and between 17 and 20, and were they blazed lines.

Counsel for defendant object to the question as an entirely improper method of leading and suggesting the answer, immaterial and irrelevant, assuming facts that have not been testified to and incompetent.

A. I did.

Q. From your work, Mr. Robinson, are you satisfied that you found the true corner, the true northwest corner of Section 21 and the northeast corner of Section 20?

621 Counsel for defendant object to the question, on the ground that the method of examination is entirely improper, leading and suggesting facts that have not been testified to, that it is immaterial and irrelevant.

A. I did. I know I did. Not as a matter of satisfaction, but as a matter of knowledge.

Q. Please state if you found a small cabin in the woods there, east of that point you located as the southwest corner of the Grant.

Counsel for defendant objects to the question, on the ground that the mode of examination is improper, leading and suggesting. That the question assumes facts not testified to, that it is immaterial, irrelevant, incompetent and without foundation.

A. I did. Easterly.
Q. Please state what kind of cabin it was, size, etc.

Counsel for defendant object to the question, on the ground that it is immaterial, irrelevant and not the proper foundation laid for the testimony.

A. The cabin set in the northeast corner of Section 21, 88 feet south of the line running east and west, that I located as being where the Grant line should be. I have not the exact measurements of the cabin, but about 10 feet north and south by about 15 feet east and west, the eaves from 6 to 8 feet above the floor, a rough wood cabin, without glass windows and apparently unused.

622 Counsel for defendant move to strike out the answer, on the ground that it is not responsive to the question, that is shows on the face of it that it is incompetent.

Q. About how old did the cabin appear to be?

Counsel for defendant object to the question, on the ground that it is immaterial and irrelevant.

A. It apeared to have been built not a great many years. As far as appearance is concerned I would say about four or five years.
Q. Please state in running that south line whether you saw any other cabin on or off the Grant.

Counsel for defendant object to the question as assuming facts not proven; immaterial and irrelevant.

A. There was no other cabin standing in the north half of the north half of Section 21, Range 19, Township 28, in January, 1909, or the year prior to it.

Counsel for defendant objects to the testimony, on the ground that the answer is not responsive to the question.

Q. Was there any other cabin in sight of that as you ran a

little over a mile to the east of the southwest corner of the Grant?

Counsel for defendant object to the question, as assuming facts not testified to, immaterial, irrelevant, incompetent and leading.

A. There was none.

Q. Did you find a large sulphur spring in that
623 neighborhood?

A. Yes, sir.

Q. Can you locate it?

A. I can tell you where there is one near the line. In fact there was two. One right on the west line of the section, and another very large spring to the east of the Grant line, about one mile down as you come from the north, to the east of the west line of the Grant about one mile on the line.

Q. Did you or not find another sulphur spring?

Counsel for defendant object to the question as assuming facts not testified to.

A. I found a spring on the section line between

Q. Between what sections?

Counsel for defendant object to the question as leading and improper.

A. Running east from the west line of the Grant, from where I as before stated, considered the southwest corner of the Rodriguez Grant, from 3 to 5 chains to the section line, and then continuing on approximately a mile to the section line, and then running south of the section line runs through the spring, between that section and the section east of it.

Q. Is it a large or small spring?

A. Pretty good size spring.

Q. How far south of the south line of the Grant that you have been testifying to, is that spring located?

624 Counsel for defendant object to the question, as immaterial, irrelevant, assuming facts not testified to, leading, seeking incompetent testimony.

A. In the fourth quarter of a mile, or in other words, over 3/4 of a mile from the south line of this section.

Counsel for defendant object to the testimony, as immaterial, incompetent and irrelevant.

Q. How far south of the south line of the Grant is the spring.

A. I cannot give the exact distance.

Q. Can you state how far north it is of the southeast corner of Section 21?

Counsel for defendant object to the question, unless witness can state of his own knowledge.

A. I will answer all right. I found it to be practically the distance given in the field notes of the section line running through this spring.

Q. Can you give the distance, the approximate distance north of the southeast corner of Section 21, or the approximate distance south of the south line of the Grant—of this spring?

Counsel for defendant object to the question, as immaterial, irrelevant and without proper foundation.

A. The distance is practically according to the distance given in the field notes of the government survey of the east line of that section running north from the southeast corner. That's as good as I can give it.

Q. Where is the location of that cabin in relation
625 to that spring? North or south?

A. It is northwest.

Q. How far is that spring south of the line running east and west through the cabin?

Counsel for defendant object to the question, as it assumes facts not testified to, without foundation and incompetent.

A. I cannot answer perfectly the number of yards.

Q. Please state according to the survey where that cabin is located?

Counsel for defendant object to the question, on the ground that there is no foundation for it; assumes facts not testified to, incompetent testimony, immaterial and irrelevant.

A. Located south of the line that I determined to be the south line of the Grant.

Q. In what section according to the public survey is the cabin located?

Counsel for defendant makes the same objection as above. We object to witness testifying from a paper in his hands without proper foundation for testifying from same.

A. In Section 21.

Q. What part?

A. N.E. 1/4 of the N.E. 1/4.

626 Cross-Examination.

Q. Mr. Robinson, are all of those various distances which you have testified about from this map to these various lines, and from the spring to the various lines measured by actual survey?

A. Yes, sir.

Q. You surveyed them?

A. Yes, sir.

Q. When did you survey them?

A. At various times. From about the first of the year 1908 to 1909. At various times.

Q. What is your present business, Mr. Robinson?

A. I am at present elected representative of Orange County, to the legislature.

Q. Not surveying at the present?

A. Not as a profession.

Q. How did you happen to make this survey?

A. At the instigation of the parties who employed me.

Q. When did you into this employ?

A. At various times in 1908 and 1909.

Q. The survey was not recently made, then, the measurements, distances, etc.

A. No, sir.

Q. You stated these various distances about which you have testified here are from memory?

A. Some of them.

Q. Which ones, or, which ones are not from
627 memory?

A. 168 chains and 81 or 80 links that I ran down on the west side.

Q. What other are not from memory?

A. My statement about the length of Section 8 was from memory, and the distance I stated from the N.W. corner to the south line of Section 5 was from memory, and in fact, I don't remember any distances but what I gave from memory.

W. A. BEASLY, being first duly sworn, testified as follows on behalf of complainants:

Q. What is your name?

A. W. A. Beasley.

Q. What is your business?

A. I am a civil engineer by occupation.

Q. What experience have you had as a civil engineer stated in years?

A. Twenty-five years.

Q. Ever done any work for the U. S. government.

A. A little in the location of disputed land lines.

Q. Have you had any experience of running land line in the State of Florida?

A. Yes, sir.

Q. How much?

A. Perhaps three or four months, during the past seven years.

Q. Where else did you operate?

A. Arkansas, Louisiana and Mississippi.

Q. Is the country laid out in townships, sections
628 and ranges in those states.

A. Yes, sir.

Q. Please state if you have made any investigation of the U. S. survey of the Grant known as the Teresa Rodrigues Grant, numbered Section 37 on the public maps of the public surveys, in Township 19. South of Range 28, East.

A. Only as far as the south line of that Grant might effect fractional Section 21 of that said township.

Q. What part of the fractional Section 21?

A. I was employed to survey the E. 1/2 of the N.E. 1/4 of fractional 21.

Q. How did you go at that survey?

A. I located four corners of the section according the field notes from the United States land office.

Q. Four corners of what section?

A. Section 21.

Q. Did you locate the northwest corner of Section 21?

Counsel for defendant object to the question, on the ground that it is leading.

A. Yes, sir.

Q. State whether you located the northeast corner of fractional Section 21?

629 Counsel for defendant object to the question, as leading.

A. I located the northeast corner of the section, not fractional.

Q. What was the purpose of your survey of the fractional east 1/2 of the northeast quarter of Section 21?

Counsel for defendant object to the question, as immaterial and irrelevant.

A. To ascertain whether a certain house located in that vicinity was north or south of the north line of the east 1/2 of the N.E. quarter of Section21, Township 19, Range 28.

Q. What was the character of the house. Give a description of it?

Counsel for defendant object to the question, as immaterial, irrelevant and without foundation.

A. It was constructed of lumber, planks boxed up vertically, dimensions about 9x12, about ten feet high with board roof and one door; no other openings.

Q. Any chimney?

Counsel for defendant object to the question, as immaterial and irrelevant.

A. No.
Q. Any enclosures about the house?
A. None.
Q. Any well?

Counsel for defendant object to the question, as immaterial and irrelevant.

A. No, sir.
Q. Please state whether or not there were any improvements in, around or about that cabin?

630 Counsel for defendant object to the question, as immaterial and irrelevant.

A. No, sir.
Q. Please state whether or not there was any other shanty or house in that vicinity?

Counsel for defendant object to the question, on the ground that it is immaterial and irrelevant, without proper foundation, assumes facts not testified.

A. There was not.
Q. Please state whether or not there was any occupant to that house that you found?

Counsel for defendant object to the question, as immaterial and irrelevant.

A. No, sir.
Q. Please state how many times you were at or near that house?

Counsel for defendant object to the question, on the ground that it is immaterial and irrelevant; without proper foundation.

A. At the house three times.
Q. How far apart were these times?

Counsel for defendant object to the question, as immaterial and irrelevant.

A. Several days or weeks duration between each visit.
Q. About what time did you visit this property?

Counsel for defendant object to the witness testifying from memory without laying foundation.

631 A. During the months of October and November, 1910, and February, 1911.
A. [Q.] With reference to the north line of fractional Section 21, where is that cabin located?

Counsel for defendant object to the question, on the ground that it is immaterial, irrelevant and assumes facts not proven; it is without proper foundation.

A. South.
Q. How far south of the north line of fractional Section 21, Township 19, Range 28, is the cabin located.

Counsel for defendants object to the question, on the ground that it is immaterial, irrelevant and without proper foundation.

A. Tow [Two] and one-half chains.
Q. Please state, Mr. Beasly, if you surveyed the east line of Section 21?
A. Yes, sir.
Q. State whether or not you found any natural marks. Did you find any spring?

Counsel for defendant object to the question as leading.

A. Yes, sir.
Q. What sort of a spring was it?
A. Sulphur spring.
Q. Large or small.
A. Large.

Q. Flowed what direction?

A. East.

Q. What distance did you find that spring northeast of the southeast corner of the section.

632 Counsel for defendant object to the question as assuming facts not proven, immaterial, irrelevant and without proper foundation.

A. Seventy chains and three links north of the corner, at the southeast corner of the section.

Q. State whether or not that southeast corner was well defined?

Counsel for defendant object to the question, on the same grounds as mentioned above.

A. It was.

Q. Was that all that you found?

A. I found the post marked properly as the post for that corner, apparently old enough to have been there when the corner was established, also witness trees as called for in the field notes and scrub and other natural land marks described in the field notes.

Counsel for defendant move to strike out the testimony, on the ground that it states the opinion of the witness, that the testimony therein is not of the proper foundation; that it assumes facts not proven; that it is immaterial and irrelevant.

Q. Mr. Beasly, you found the spring 70 chains and three links north of the southeast corner of fractional Section 21, how far north of a line drawn east and west through this spring in [is] the cabin located.

A. Four chains and seven links, to the north wall of the cabin.

Q. State how far north of the south line of Section 21 is the location of this cabin?

633 Counsel for defendant object to the question, as immaterial, irrelevant, without proper foundation, assuming facts not proven and incompetent.

A. Seventy-four chains and 10 links.
Q. What direction does the cabin bear from the spring?

Counsel for defendant object to the question, as immaterial, irrelevant, without proper foundation, assuming facts not proven; incompetent.

A. Northwest.

Cross-Examination.

Q. When did you go out to make this survey, approximately?
A. The last part of October, 1910.
Q. By whom were you sent to make the survey?
A. By Mr. J. H. Jones.
Q. Were you employed by Mr. Jones' parties in this suit?
A. Yes, sir.

Redirect.

(Handing paper to witness).

Q. Please look at that paper and state whether or not you used that in making your surveys in the work you have been testifying about?

634 Counsel for defendant object to the witness testifying to the use of a paper which has not been properly identified; as leading.

A. Yes, sir.
Q. What does that paper purport to be?

Counsel for defendant object to the question, as leading; seeking conclusion of law on opinion of witness.

A. It purports to be a transcript of the original field notes of the survey of the private claim of Theresa Rodrigues, Township 19, south of Range 28, East, Florida, executed by M. A. Williams in 1851, is certified to by United States Sur-

veyor General of District of Florida, Charles H. Parlin, on the 28th day of January, 1908.

Recross.

Q. Mr. Beasly, did you ever see Mr. Parlin write his signature?

A. No, sir.

MR. JOS. H. JONES, counsel for complainant, testified as follows:

Paper handed witness; is asked what the paper purports to be.

Counsel for defendant object to the question, on the ground that the paper is the best evidence of what it purports to be.

A. This paper purports to be a transcript of field notes of the survey of the private claim of Theresa Rodrigues, in Township 19, South, Ranges 28 and 29, East, Florida, executed by M. A. Williams in 1851, to be certified by Chas H. Parlin, United States Surveyor General of the District of Florida, dated the 28th day of January, 1908.

Q. Is that the same paper which the witnesses,
635 Fries and Beasly, have testified they used in making surveys about which they have testified in this case?

A. Yes, sir; this is the identical paper.

Q. State the history of that paper?

A. This paper was obtained by counsel in response to an application therefore, by mail, to the United States Surveyor General of the District of Florida, then located at Tallahassee, and was received in response to such application made by mail, by due process of mail in response to said application.

Q. State whether or not the United States Surveyor General of Florida, named in the certificate, made a charge for furnishing that paper?

A. Yes, a nominal charge. I don't remember just what it was.

Counsel for defendant object to the testimony, on the ground that the witness is stating a conclusion; that there is no foundation to the testimony, that there is no proper showing

of the receipt by the proper authorities, or the sending by the proper authorities of the paper in question; that the evidence is not the best evidence; that there is no showing sufficiently definite with regard to the making of the demand or request for the paper, nor the nature of same.

Witness further stated that he made the application for this paper and that he remitted the charge made by the officers, Charles H. Parlin, for the said paper; that same was duly paid for, the exact amount he does not here recollect. That he made application for same in the name of his law firm, Jones & Jones.

636 Counsel for defendant move to strike out the answer, on the ground that it is vague and indefinite; without proper foundation; immaterial and irrelevant; not based upon the best evidence.

Q. State whether or not you are able to swear to the genuineness of the signature of Charles H. Parlin, United States Surveyor General of Florida, holding office in January, 1908?

Counsel for defendant object to the question, as without proper foundation, immaterial and irrelevant.

A. I cannot identify the signature as having been made manually by Charles H. Parlin, but the paper came to me in response to a request for same, made to Charles H. Parlin, and the same reached me by due process of mail from Tallahassee, bearing the signature it now bears, with the seal it now bears.

Counsel for defendant move to strike out the testimony, on the ground that it is incompetent; not the proper way of proving authenticity of said paper or the signature of the officer purporting to issue same, or the source of said paper; that it is immaterial, irrelevant and incompetent.

Counsel for plaintiff offer in evidence the said paper testified to by witnesses, the same to be filed in evidence, marked Complainant's Exhibit ...."

637 Counsel for defendant object to the introduction of this paper in evidence, on the ground that it is not under official seal; that it has not been properly authenticated or the identity of the signature purporting to be the surveyor general's has not been properly identified or authenticated; that the testimony given to prove the paper is incompetent and is the mere opinion of the witness, and on the further ground that this is not a certificate of any public officer of the State of Florida; that it is immaterial and irrelevant.

Counsel for complainant give notice that they will at once obtain and offer in evidence the field notes of the United States Survey of Section 21, Township 19, Range 28, and certified copies of the patents from the United States Surveyor General, to all, or including any part of the north 1/2 of fractional Section 21, to the northeast quarter of the northeast quarter of fractional Section 20, Township 19, Range 28.

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638 TESTIMONY TAKEN IN PALATKA, PUTNAM COUNTY, FLORIDA, ON MARCH 13th, 1911, AT TEN O'CLOCK A. M., PURSUANT TO NOTICE AND AGREEMENT OF THE PARTIES.

In the United States Circuit Court, Southern District of Florida, in Chancery.

Marcos, et al.,
vs.
Wilson Cypress Company.

Present—J. H. Jones and W. W. Dewhurst, Esqs., Representing the Complainants.
C. P. Cooper and E. E. Haskell, Esqs., Representing the Defendant.

Testimony Taken before Raleigh C. Dowling, Notary Public.

639 Thereupon, the defendant to further maintain the issues upon its part, produced and caused to be sworn

as a witness, one ALFRED HOWARD, who testified as follows:

Direct Examination.

Mr. Cooper:

Q. What is your name?

A. Alfred Howard.

Q. What is your business, Mr. Howard?

A. I am a surveyor.

Q. What experience have you had as a surveyor?

A. Well, off and on I have been surveying for twenty-eight years.

Q. How long a time have you surveyed?

A. Well, quite a number of years at the time. I was for twelve years in the abstract business; running an abstract office in Deland, in Volusia County.

Q. Have you had any experience in surveying wild lands?

A. Yes, sir.

Q. Have you had any experience in surveying lands with reference to the government surveys and measurements?

A. Yes, sir; that was my principal work to be done, and to locate the lines.

Q. Have you had any experience in surveying Spanish land grants?

A. I have, frequently.

Q. Have you recently made any survey, Mr. Howard, in connection with or on any of the lines of a Spanish land grant, known as the Teresa Rodriguez Grant, located in Lake County, being Section Thirty-seven in Township Nineteen, South, Range Twenty-eight, East?

A. Twenty-eight, east, I have; yes, sir.

Q. Who sent you to make that survey?

A. The Wilson Cypress Co.

Q. Will you state what the purpose of that survey was?

A. It was to determine the south line of the grant, running west from the southeast corner of the grant for a mile to locate that line, running east from the southeast.

Q. East from the southwest or southeast corner?

640 A. East from the southwest corner, southwest; yes, sir.

Q. Will you please state, Mr. Howard, what you did, and

what your work was, and who, if any one, assisted you in that work?

A. Mr. Morehead and Mr. Owens, J. L. Owens, and his son, Avery Owens.

Q. State what you did, where you went and all?

A. We sued Mr. Morehead's transit and the tape that I carried, Mr. Morehead's transit and the tape that I carried. We commenced by identifying the stake at the southeast corner of Section 21.

Q. Will you please state, Mr. Howard, whether or not you had any field notes or used any field notes to locate that point?

A. We used a copy of the certified field notes for Section 21.

Q. Will you please look at that paper and see if you ever saw that paper before? (Handing witness paper).

A. Yes, sir; this is the copy we used.

Q. That is a copy of the field notes that you used?

A. Yes, sir.

Q. Do you know whether that is a correct copy, Mr. Howard, of the certified field notes?

A. It was virtually a correct copy.

Q. Will you state any difference between that copy and the field notes, if you can?

A. It states here south bearing post, it was not an important error, but the point south 33 west as it is here, was south 33 east in the certified copy we used, and the east was wrong on the ground.

Q. The notes that you have there, then, proved to be correct?

A. This was correct, and the other certified copy that was in evidence was incorrect in having "E" where it is "W" here, it is right here "W."

Q. How do you know that is right?

641 A. First, in stating the quarter section post the bearing was taken and there on the line by the government surveyor he selects one in one section and one in the other, the line is between two sections and that is half way on the line, and the other bearing was south 71 east in both copies, 75 links, therefore, the other one should have been on the left side, south 33 east would be wrong, south 33 west was right.

Q. Were there any other differences that you recollect?

A. There was, that embraced in brackets "Map shows variation 4 degrees east," was not in the other copy. That was the point that helped us to get the idea of the variation as at the present time.

Q. Could you have made the same survey without that note?

A. I should have been obliged to guess at it, myself. It says here "Variation is not given in the heading."

Q. Will you look at this paper, Mr. Howard, examine that paper and see if you have ever seen that paper before and where?

A. Yes, sir; that is the one we checked up by. That is the one we saw and this is the one we checked this up by to do our work.

Q. How do you identify that paper, Mr. Howard?

A. By its marking—filing and refiling marks here.

Q. Will you read what is written on the back of that paper?

A. "Refiled this February 18th, 1911, as Complainants Exhibit No. ...., C. B. Robinson, Special Master."

Q. What is that paper, Mr. Howard?

A. It is a certified copy of B. E. McLin, commissioner of agriculture of the State of Florida, on the field notes of the survey of Section 21, Township 19, South, Range 28, East. There was the error that we have just discussed.

642 There is the "E"—it should be "W."

Q. Have you ever made any comparison of these field notes, that copy and that original?

A. Yes, I compared these two.

Q. You did that personally?

A. I did that personally, in this room, when we were first given this copy to see.

Q. You know, with the exception which you have mentioned, that that copy corresponds with that original?

A. Yes, sir; it does. The only errors are those brackets. (Indicating).

Q. Mr. Howard, how about these notes and memoranda in various places?

A. Those pen interlineations were made in the field by me.

Q. Well, what are this memoranda—what was their purpose; are they part of the field notes?

A. They were showing the courses and distances as they were used to identify the stakes, simply to show that the courses were the same in every case.

Q. You made those memoranda?

A. I made those memoranda; the courses were the same, but the measurement of the trees were varying.

Mr. Dewhurst:

We object to that testimony, Mr. Dowling, on the ground that the witness is undertaking to testify to memoranda made on the paper of what he claims to have been his proceedings and the testimony is incompetent while he is a witness.

Q. That written memoranda, then, Mr. Howard, is not a part of the field notes as copied from the original you have mentioned?

A. That is my own memoranda.

Q. Will you please state how the copy of the
643 field notes made and compared by yourself with the original can be distinguished from your memoranda on that paper?

A. The copy as compared is typewritten; my memoranda is made with the pen by myself, in my own handwriting.

Mr. Cooper:

The defendant offers in evidence the papers testified to by the witness as a compared copy of the certified copy of the field notes of the survey of Section 21, Township 19, South, Range 28, East, being surveyed by R. W. Norris in 1848, and filed February 18th, 1911, by C. B. Robinson, as Special Master in this cause, as Complainant's Exhibit No. ....; the notes are offered in evidence by the defendant subject to those mentioned by the witness as made by himself or as indicated by his testimony as not being on the original paper from which this copy was made.

Mr. Dewhurst:

We object to that attempt to introduce in evidence a mutilated paper not a copy of the paper already in evidence, because the same is incompetent and because it is an attempt to alter an official field notes by the written memoranda of the witness instead of by testimony from an actual survey.

Filed in evidence, marked Defendant's Exhibit No. ....

Q. Mr. Howard, will you look at this paper, please, and state if you have ever seen that paper before? If so, where?

A. Yes, sir; that is my drawing.

Q. That is your drawing; when was that made with reference to the time of this survey?

A. It was made directly after the survey in the office.

Q. How long after the survey?

A. The next day.

Q. Will you state, Mr. Howard, what that paper represents?

644 A. It covers the result of our survey to locate the line, south line of Teresa Rodriguez Grant, in connection with the lines of Section 21 and Section 20.

Q. What lines are shown on this paper, Mr. Howard?

A. The north line of Section 21, as indicated by the stakes on the ground, at the northeast corner and northwest corner of Section 21, and the west line and the south line of the grant, as indicated by stakes and blazed lines.

Q. Are there any other lines shown?

A. The portion of the north line of Section 20 running west from the northeast corner is shown.

Q. Now, Mr. Howard, will you take these field notes, please, and that chart, and state consecutively, in just the order in which it was done, your manner in proceeding in making this survey and what you did, and what you found—just in the order in which you did it?

A. First, we located the stakes at the southeast corner and the northeast corner of Section Twenty-one—

Mr. Dewhurst:

We object to that testimony of the witness, Mr. Dowling, as to what he did to locate the lines upon the paper about which he has testified, because the proper foundation has not been laid; no testimony has been adduced to show that he had any knowledge of where the lines of the Theresa Rodriguez Grant were according to any official survey, or that he used any field notes of any official survey of the Theresa Rodriguez Grant.

Q. Mr. Howard, in stating what you did, please refer as

frequently as possible as the facts will justify, the field notes in connection with your testimony, to show how you went about this survey and what the details of that survey was?

A. We went to locate the south line of the Grant in question, and to do that it was necessary to locate the section lines which adjoined it.

Q. Now, then, you stated that you located two
645 corners?

A. We located two corners on each side of this south line of the Grant.

Q. Now, Mr. Howard, will you please examine this paper and state whether or not you have ever seen that before?

A. I have seen it before and we used it in the survey.

Q. Will you please state what that paper is?

A. Yes, sir; it is a copy of the United States Patent to the Theresa Rodriguez Grant.

Q. Will you state what part of that paper you used in making that survey?

A. The part that begins, "The following being a description of the survey taken from the approved field notes."

Q. Will you please examine this instrument, Mr. Howard, and state whether you ever saw that instrument before?

A. I have seen this before.

Q. Where, and in what connection?

A. It was given me in connection with this paper to be used in the field.

Q. Will you state, Mr. Howard, what that part of the paper referred to as the description which you have just mentioned, is, or how it compares with the paper which I last handed you?

A. We compared enough of it to see that it was the same as this paper of the required portions of the grant line of which we were interested in looking into.

Q. What portions were those?

A. It was the west line and the south line of the Grant.

Q. The description then in that paper which you said was a copy of the United States Patent, to the Rodriguez Grant, embraced a correct description of the west and south lines of the Grant, as shown by this instrument which you have in your hand—is that what I understand?

646 Mr. Jones:

We object to that line of examination as leading the witness.

A. I compared the two to find that they were correct, so far as the figures that we needed to use.

Q. Now, Mr. Howard, I want you to state just exactly how you compared those two papers, and what parts you compared—I want that explained fully?

A. Yes, sir. Beginning at the northwest corner of the claim, it does not say "beginning at the northwest corner," but says "Variations four degrees east," survey is executed to variation of 40 degrees east, that was a mistake; it should have been four degrees east "run south," "northwest," then the next figures 162.65 chains across the north line of Section 20, 168 chains to corner. In the Patent it says, 168 chains the southwest corner of this survey, pine north 60 degrees, east 60 links distance. The field notes differ in saying 60 X R. The Patent says, "Thence east," and the field notes say second line east south line." And next, 3.80 chains across west line of Section 21, pine south 69 west 30; pine south 31 degrees east 20. Next item is 51 chains to grass pond; 57 chains across ditto. The Patent says 83.50 chains across west line of Section 22 in edge of branch of White Sulphur Spring 74.60 north of southwest corner, being a variance of thirty links from the measurement given in the field notes filed in evidence.

Mr. Dewhurst:

We object to having the witness take up the time of making comparisons of the two papers.

The Witness:

I think that finishes it.

Q. Mr. Howard, will you please state what notes you used in making the survey of the south line of the Grant?

A. I used these notes as given in the copy of the Patent, certified copy.

Q. Did those notes in the Patent correspond in all other respects than testified by you in the field notes?

A. They did.

647 Q. As a surveyor, will you state what practical difference would be made by those variances?

A. I don't think they are of any consequence.

Q. Will you explain that?

A. The difference of thirty links in the whole mile is immaterial.

Q. Is that the only immaterial variance in your opinion?

A. That was the only immaterial variance.

Mr. Cooper:

The defendant offers in evidence that portion of the paper described by the witness as a patent which witness has stated was used for the purpose of locating the south line and west line of the Theresa Rodriguez Grant, as a compared certified copy of the official field notes of the survey of the private claim of Teresa Rodriguez on Big Spring, Section 37, Township 19, South, Range 28, East, and Section 41, Township 19, South, Range 29, East, surveyed by M. A. Williams in 1851, filed in evidence by the Special Master, August 24th, 1909, as defendant's Exhibit No. 27.

Q. Mr. Howard, I will have you identify the paper from which you stated you made the comparison, by stating what it purports to be on its face?

A. I identify this as the paper filed in evidence on August 24th, 1909, as Defendant's Exhibit No. 27, C. B. Robinson, Special Master.

(Filed in evidence, marked Defendant's Exhibit ....)

Q. Now, Mr. Howard, I want you to indicate from this copy the commencement and the ending of that part of the notes which you used?

A. Commenced with the words, "The following being a description of the survey," on page one and ended with the words—with the third line on page two, after the word, "field notes."

Q. Now, Mr. Howard, will you describe your
648 proceeding in the matter of that survey as indicated by that chart, and in accordance with what you actually did?

A. To locate this south line of the Grant, crossing the east line of Section 21, we located and identified the corner stakes at the northeast and southeast corners of Section 21, and measured the distance between them.

Q. What did you find, if anything, at the southeast corner of Section Twenty-one?

A. We found the original government stake in our judgment, with the four bearing trees in due courses from it.

Q. Were those trees the correct distance, as indicated in the field notes?

A. They were the correct course from the stake to the centers of the trees on all four courses, but the distance varied from the distance given in the field notes.

Q. Was that post marked in any way?

A. It was marked on the southeast side with the figures "2-7" facing Section 27.

Q. In your opinion, as a surveyor, that was the southeast corner of Section 21?

A. I have no doubt about it.

Q. From what did you locate that corner?

A. From the bearing of four trees.

Q. Where did you get those bearings?

A. From the field notes of which we had been proceeding and about which we have testified.

Q. Now, just go on—I want you to tell what you found out each point—how you found it out?

649 A. We identified the northeast corner by the field notes, and set a stake just in the edge of a hammock, the stake was there but had been burned enough so any marks were obliterated on it. However, it was still left, government stake. We identified it by three out of the four bearing trees being in due course, being in the exact course from it—the fourth tree we could not find.

Q. Just go ahead—I want you to cover the entire survey?

A. We took it and I don't think there is any doubt about that being the location of the government stake, because these four trees were in the exact course from it. However, the distance did not agree. It is well known to me and to other surveyors that that three or four identified trees—

Mr. Dewhurst:

We object to that testimony what is the opinion of surveyors. Let him testify to what he did.

A. It is well known to me that identified by courses with the distance approximately sufficient to identify government

corners; we found it 87 links; the line measured was eighty-seven links in excess of the measurement given in the field notes.

Q. What line is that?

A. The east line of Section Twenty-one. We could not identify anything there as witnesses to the location of the Grant line in the neighborhood of five chains south of it.

Q. South of what?

A. South of this stake we had identified as the northeast corner of that section. We searched the woods thoroughly to find any marks by which we could locate the south line of the Grant. Again, looking at the notes, we found that on page two, at the top of the copy of the Government Patent, locates the crossing of the Grant line in the edge of the branch of White Sulphur Springs. Having identified the section lines, found no branch with the White Sulphur Springs upon it, excepting where we had crossed at the spring; find that the spring measurement agreed from the measurement
650 from the spring north to the section corner, northeast corner of Section Twenty-one, we went toward the spring endeavoring to find any tracing of the Grant line; speaks of crossing the branch of the spring and as that branch of the spring does not cross the section line except right at the spring, we investigated in the neighborhood of the spring. We found blazed trees testifying to a marked line, old blazed trees, testifying to a marked line that crossed just above the sink hole in which the spring was located, just near the edge of it. We traced by marked trees that line westward, passing quite a piece westward. I can't testify anything further what was done that day, but we dropped that investigation then, and the next morning went to the southwest corner of the Grant, where we expected to find the location. We find a very old post, which in my judgment was the original post, marked as indicated in the field notes "X" with an "R" by it on one side. From that we measured northwardly to the crossing which was in sight and found the distance was 9.57 chains. We examined that post; it seemed to be an old post, but there was nothing to identify it any further. We measured eastward from that 4.22 chains to another post which was in sight, and identified that as being the section corner, northwest corner of Section Twenty-one, the old government post—identified it by its having figures "21" on the southeast side "16"

on the northeast, "17" on the northwest; southwest corner facing Section Twenty-two was obliterated by the weather, and four bearing trees which were all squarely in course, but the measurement to them did not correspond exactly with the field notes. I would say that the movement of either of these trees six inches or a foot out of line would have thrown the courses out in measuring to the bearing trees, so that I feel positive that the stake had not been as the original government stake put in its proper place.

651 Mr. Dewhurst:

Q. You are referring to the corner stake of Section Twenty-one?

A. Yes, sir; corner stake of Section Twenty-one.

Q. You mentioned a post, Mr. Howard, that was not marked?

A. The post here (indicating) not marked, was apparently the same age as the others, was not marked, and the field notes give no bearing trees to it; simply state "No description of a corner at this point in the field notes." We had corrected the variation of compass used in measuring the east line of Section Twenty-one, to correspond with the true east line, one degree and 18 minutes. We found that variation was used in locating these Grant lines.

Q. Will you state whether you made any investigation from the post which you have described as the southwest corner of the Grant, eastwardly?

A. We did run it northwardly and blazed marked trees northward from it, and then after locating the section corner we returned to the southwest corner stake and commenced to lay out the line eastwardly from it.

Q. Will you state whether you found any marks or boundaries of any kind?

A. After starting from it, we found frequently old blazed trees along the line. We found, first, a stake which we could not identify by bearing trees given in the field notes as the intersection with the west line of Section Twenty-one, neither did the stake appear to be so old as the others. We continued that line eastwardly, checking closely each marked tree that we found; found that we were tracing the line parallel by the bearing trees until we reached the point that is mentioned in the field notes, having measured the distance to the pond.

Q. Did you trace it any further?

A. We traced the same line correctly with the
652 transit until we reached the east line of Section Twenty-one, and the blazed trees that we had noticed before in that region on the north bank of the Sulphur Springs sink hole.

Q. Mr. Howard, have you had any experience in judging of the age of posts and marks used to mark boundaries or tracts of land?

A. Yes, sir; I have had considerable.

Q. What experience have you had?

A. Well, pine trees that were marked back as far as they usually show, and sometimes they are still open; sometimes it has been closed up and marked on the outside, by which it could be suspected they were inside and cut them out. I did not identify any along this line that had been closed up; there might have been some, but we made no attempt to do that. We simply found enough trees before we reached the pond to satisfy us we were upon the old blazed line, that we used the exact variation that was used on that line, and that the age of it was, in our judgment, at least fifty or sixty years old.

Q. How did those blazes on that line compare with the blazes which you have mentioned on the west line of the Grant?

A. They were similar.

Q. Similar in age?

A. Similar in age and similar as being similar blazes.

Q. Mr. Howard, could you undertake, from your experience, to state the age of that stake, which you located as the southwest corner stake of the Grant?

A. Yes, sir; I have seen a good many about that age, running from fifty to sixty years old; they had similar marks on them. I have been able to identify them as bearing trees, as old government stakes reblazed stakes. I have found in some places, but I can tell the difference between them.

Q. In your opinion, was that a reblazed stake?

653 A. In my opinion that was the original stake, the weather-beaten surface of the stake determined that largely.

Q. Did you investigate between the southwest corner of the Grant and the point where the west line of the Grant

crosses the north line of Section Twenty—did you examine that space between there for any corner post of the Grant?

A. I did; I kept my eyes open by the chaining as I went there.

Q. Did you see any other stake there?

A. I saw no other stake; no, sir.

Q. Will you state whether or not there were any blazes between those two points which I have indicated?

A. As I said, I did the chaining with Mr. Owens, Jr. I did not stop to investigate the blazes along there; there were some blazes along there, but I did not investigate them on that line. Mr. Owens, Sr., and the other witness may have carefully examined that line up there, both there and below.

Mr. Dewhurst:

We object to testimony about that.

A. Mr. Morehead handled the transit, but I examined closely every change which he made in it, and sighted through it so I could testify as correctly as if I were running it myself.

Q. Will you state, in your opinion, from this survey, Mr. Howard—

Mr. Dewhurst:

We object to that leading question. We object to the form of the question.

Q. Mr. Howard, did you find any bearing trees in locating the southwest corner of the Grant which you have described?

A. Field notes describe one tree.

Q. Will you please state whether you found that tree?

A. We found that tree; that is, we found a hole in the ground which apparently had been burnt out—the stump hole.

Q. You recognized that as a stump hole?

A. Yes, sir; I recognized that as a stump hole of a large tree.

654 Mr. Haskell:

Q. Starting from this point which you determine as the southwest corner of the Grant, are these blazed lines you have testified to bearing east from this point that you ran?

A. It bore exactly east with a variation of the compass that we used, which was the same as the section line that we had proved.

Q. And divided exactly on the edge of the sink hole with the field notes as to the survey?

A. Using that as a landmark, which was close by where the edge of the sink hole dropped up.

Q. Now, are there in that vicinity between the point which you established as the northwest corner of Section Twenty-one, between this point you determine as the southwest corner of the Grant, there were no other blazed lines or marks running east?

A. I did not see any.

Q. Did you look for them carefully?

A. I did not look there so carefully as I might have done had I had more time.

Q. Then, you are not prepared to state, of your own knowledge, that there are or are not other blazed lines between the point you established as the southwest corner and the northwest line of Section Twenty-one?

A. No, sir; I am not. My time was taken up with the chain and careful examination, following up to carefully examine the transit and those bearings from which it was set.

Q. How far east from this southwest corner did you survey or run along the blazed line you have testified to, running east?

A. We ran until we crossed the section line at the spring.

Q. The Sulphur Spring?

A. The Sulphur Spring; yes, sir.

655 Mr. Cooper:

Q. Mr. Howard, will you state from your survey and investigation there, where, in your opinion, the south line of the Teresa Rodriguez Grant is actually laid out and survey and marked by the United States government, is located?

A. I am of the opinion that we traced the line as located from this old stake that was standing.

Q. That you have described?

A. That I have described. In due course, along the blazed line until we reached the pond at the approximate proper distance, and that if it had been anywhere north of the neighborhood of the distance given, south of the section line 5.35

chains, that it would not have hit the pond, which is described in the field notes.

Q. Do you know where the line is, after it crosses the pond— did you see the blazed line?

A. We saw the blazed line, blazed trees, afterwards.

Q. Did you run that line?

A. Correctly.

Q. Will you state whether or not you saw any chain in the neighborhood of that line?

A. We passed a cabin in 63 feet south of it.

Q. South of what?

A. South of the cabin. We passed along this line 63 feet south of the cabin.

Q. Will you describe that cabin, please?

A. It was a little one-room shanty, about ten by twelve.

Q. What was it constructed of?

A. It has been there a good many years, five or six or seven or eight years.

Q. How was it constructed—do you recollect?

A. Roughly construct, out of rough lumber, with a bunk and rough boxes for tables, etc., in side.

Q. Did you see any other there?

656 A. I did not see any other in sight.

Q. Did you measure the distance from that line to the cabin?

A. I measured the distance from the line to the cabin, 63 feet.

Q. Mr. Howard, did you see any other blazed line that might have been the Grant line, in your opinion, where the line ought to have been in the field notes?

A. I examined the northeast portion of Section Twenty-one between the two lines that were located as the section line and the Grant line and found no indications of a line.

Q. Mr. Howard, will you state whether or not any of the distances which you measured in making this survey besides the distance from the line which you determined to be the south Grant line to the north line of Section Twenty-one, varied from the distance given in the field notes or was that the only distance which varied?

A. From the intersection of the line we traced with the east line of Section Twenty-one and the blazed line we ran as

the south line of the Grant north of the section corner, we did identify as the northeast corner of Section Twenty-one, was 9.10 chains, which practically agrees with the distance from the southwest corner stake of the Grant north to the section line, north line of Section Twenty-one which was 9.57 chains.

Q. Will you state, Mr. Howard—

A. —Which did not agree with the figures given in the field notes.

Q. Will you state, in making this survey, whether you found generally that the distances mentioned in either set of field notes or both sets were actually found upon your survey to correspond with the natural marks and stakes which you found?

A. The distance upon the two sets of field notes
657 did not agree with anything that I saw which would indicate the south line of the Grant.

Q. Well, Mr. Howard, I don't think you understand my question—What I am getting at is, did you find many differences between the actual survey of the lines and marks—did you find any distance—did you find any difference in the distance as you actually measured and the field notes?

A. The distance we measured we only found approximate, not exact in our measurement.

Q. What has been your experience in surveying similar grants according to similar government surveys, with respect to corresponding distances given in field notes, with marks and bounds and stakes and natural objects?

A. My experience has been that the measurements of section lines in connection with the grant lines has been so variable that we could not regard them as anything more than approximate information, than to show us where to hunt for the grant line and section line; was frequently done, hastily and carelessly, in the office apparently; that we have used them as approximate figures to locate the grant lines by. I had occasion to write to the department on that occasion several times, and they always referred me to the Book of Rules issued by the Government Land Department for relocating lines and corners. Their reply has always been that we cannot undertake to decide in any particular case, but that the monuments on the ground should take precedence of the figures and measurements given.

Mr. Haskell:

Q. Mr. Howard, will a line run from the west line of this grant north of the line you have described and run to the Sulphur Springs, touch or leave this Sulphur Springs, this natural object?

658 A. I didn't go to the Spring on the west line of the Grant.

Q. From the west line, I said. Will a line run from the west line of this Grant north of the line you have described and run to the Sulphur Spring, touch or leave this Sulphur Spring, this natural object—whether the line north of where you ran—

A. Our line was north of the Spring; anything further north than that would miss it; it would also miss that grass pond.

Q. Whether the south line of the Grant intersects the Sulphur Spring?

A. It is 133 feet north of it, where we located it.

Q. And the cabin is 63 feet north of that line?

A. The cabin is 63 feet north of that line; yes, sir. The distance from the Spring north to this stake corresponds with the field notes.

Q. Which Spring are you referring to?

A. The only one I saw was the Sulphur Spring on the east line. The distance corresponds with the field notes and the stake at the northeast corner of Section 21.

Q. Then, I understand you to say there are no evidences of a line run at any other point purporting to be the south line of the Grant, than the one you located 133 feet north of the Spring?

A. I found no indication of any other line.

Q. Did you make an examination for that purpose?

A. I did, on the eastern part of the line.

Q. On the east part of Section 21?

A. Yes, sir.

Q. And the line that you ran is a plainly marked old line with old blazes and old witness trees here on the east line of Section 21?

A. Yes, sir.

659 Mr. Cooper:

Q. Mr. Howard, will you state whether that chart or drawing which you made there is made to a scale?

A. I drew it to a scale.

Q. What is the scale, please, sir, if you recollect?

A. Eight chains to the inch; ten inches would be a mile. You asked about indications between that line and this one (indicating). The only indication I found was that this pond would be passed on the north edge by the line at 5.35 chains south of the section.

Q. It would not touch the pond at all?

A. It would not touch the pond at all; it would pass on the north edge of the pond and the distances from here (indicating) to the pond practically agrees with the field notes.

Q. You consider then, Mr. Howard, that those lines as indicated on that map in connection with your testimony, are correct, that south line of the Grant?

A. It is correct according to my best knowledge and belief.

Cross-Examination.

By Mr. Dewhurst:

Q. Have you been employed to do any other surveying work for the Wilson Cypress Company?

A. Yes, sir.

Q. What other work have you done for them?

A. Well, I worked for a year for them in running out lines in several counties.

Mr. Cooper:

Excuse me a moment, Mr. Dewhurst. I want to offer this chart in evidence. We offer this pencil drawing purporting to be a drawing to a scale showing the witness' survey as testified to, locating the south boundary of the Rodriguez Grant.

660 Filed in evidence, marked Defendant's Exhibit . . .

Q. Are you in their regular employ?

A. I am not.

Q. Have you been in their regular employ?

A. I have not for four years.

Q. Were you then in their regular employ?

A. Yes, sir.

Q. What has been your occupation since you were in their regular employ?

A. I have been in DeLand practically all of the time surveying in Volusia County, more or less.

Q. Have you been holding a city office in DeLand?

A. Yes; I held the office of city treasurer there. They had no established city surveyor, but I practically held that as an office.

Q. What practical experience have you had as a surveyor; when did it begin and where has it be [been] pursued?

A. I learned my work in the north; came from Detroit, Michigan, in 1883, and I have been 28 years in Florida, in which I have practiced it more or less.

Q. Well, how much of the time since 1883 have you been employed as a surveyor?

A. Well, with the exception of twelve years, in which I had charge of the abstract office, perhaps two other years in other work, I have been at surveying; about half of the time that would be.

Q. What is the variation of the needle in Florida at this time, variation of the magnetic needle?

A. The variation is—I have not determined it in late years, but it is in the neighborhood of one and a half or one and three-quarters degrees. I did determine it at one time, but we check up three minutes each year.

Q. You mean to say it is three minutes each year?

A. Not exactly, but approximately.

Q. Is it less or more than three, annual variation?

A. The annual variation varies in different parts
661 of Florida each year. That is at the time that I was among my first surveying works in Florida I wrote to the department at Tallahassee asking them about variations, and they gave me a note in regard to this, that a variation—

Q. I don't care for that.

Mr. Haskell:

It is in response to your question.

A. It gave me the information that the degrees each year in Florida had a rate of three degrees and twenty minutes.

taking the variation given in the field notes at different times and different years varied three years and twenty minutes, as too much for our part of Florida, not quite that much. I determined upon three minutes as being as close as we could come. But the variation on different townships on the original survey differ. In DeLand I am doing that township I am using two degrees on the east and west line, and two and three-quarters on the north and south line; in the next township south—

Q. I don't care anything about that. Now, what variation did you use to resurvey Section Twenty-one and the Teresa Rodriguez Grant?

A. Used one degree and forty-eight minutes.

Q. Did you start with that variation?

A. We took the variation which Mr. Bradley started with, fifty-five minutes, but we found in doing that that we were working to the eastward on this section line, therefore we corrected the variation. When we got here and checked up we found the variation of one degree and 53 minutes would make that out of the way, therefore we corrected the variation.

Q. Therefore you started your variation and was wrong by one degree?

A. Yes, sir; on that line I should not have started that way.

Q. Then, in determining this variation of one degree and 48 minutes, you determined it from a blazed line that you found?

A. Yes; from the blazed line and proper courses
662 from one stake to the other on the section line.

Q. Now, what measuring instrument did you have to measure the distance?

A. We had a complete transit.

Q. To measure the distance?

A. I used my steel tape, 100 feet steel tape.

Q. What was the nature of the ground that you measured over?

A. We cleared it of unnecessary bushes, it was so were [we] could measure it accurately.

Q. Well, what was the nature of it?

A. It was pretty nearly level scrub land; occasionally a clump of palmettoes, open pine woods.

Q. Was it scrub palmetto, generally?

A. No, sir; not much, generally open pine woods.

Q. There was very little scrub palmetto you say?

A. Very little.

A. How about on the east line of Section Twenty-one?

A. There was some considerable scrub we found after we came down. We went out two hundred feet to find clear land.

Q. You came down how far?

A. We came down past the quarter section and then an off-set.

Q. And then ran on the off-set?

A. Ran on the off-set, came on the line again.

Q. How far did you run on the off-set?

A. We ran—I haven't the memorandum with me—but I would say we ran probably three-eighths of a mile.

Q. And then for three-eighths of a mile you were not on the section line at all?

A. Not on that section line.

Q. What sort of surface was that you measured over?

663 A. We went that way to get good surface, excepting where we cut through some bushes and little clumps here and there, we had all good surface.

Mr. Jones:

Q. How many drains did you cross on that line?

A. I made no notes of any drains; there were none in the field notes given.

Q. Which line did you first run on the ground?

A. There were no drains up here, we crossed on the line at all.

Q. What line did you first run on the ground?

A. The first line was this line (indicating) the east line of Section Twenty-one.

Q. Who held the steel tape?

A. Mr. Avery Owens.

Q. Well, that is one end; who held the other end?

A. I held the other end—the rear end.

Q. Now, are you satisfied that your measurements were accurate?

A. I am satisfied that they were correctly measured, very carefully measured.

Q. Then, how far did you make it on the ground, from the

southeast corner of Section Twenty-one as your starting point, to the stake set on the ground as the northeast corner of Section Twenty-one?

A. 81 chains and 23 links on the east.

Q. Did you find the southwest corner post of Section 21?

A. I did not examine that line to find it.

Q. You say you found the northwest corner post of Section Twenty-one?

A. Yes, sir.

Q. How did you identify that?

A. Very satisfactory; three of the four sides had the original numbers upon them; twenty-two was worn off, as shown on the plat.

Q. Marks with the numbers 17, 16 and 21 as shown on this plat?

A. Yes, sir.

Q. How were the bearing trees from that?

664 A. The bearing trees—

Q. Satisfactory?

A. Proved satisfactory in courses, the distances were varying.

Q. Then, you feel satisfied that you carefully located upon the ground the northwest corner of Section Twenty-one?

A. Yes, sir; if the stake had been removed one or two or three feet, it would have thrown that off, but the whole four trees were there in the proper courses.

Q. What was the apparent age of that section post?

A. It agreed very near as I can judge as to the age of the stake here (indicating) of which no hearings were given.

Q. I am asking you what was the apparent age?

A. Apparent age, was, I judge, the same—fifty or sixty years.

Q. What was the nature of the stake, what kind of wood?

A. If some one told me it was put there forty years ago, it was not fifty or sixty years at the time, I would have conceded it, within ten years or so, but it was an old stake, what I usually find fifty or sixty years old, I might have conceded it, but my judgment might have been wrong to the extent of a few years.

Q. Then, you have absolutely to your satisfaction found on the ground, the stake which marks the northeast corner of Section Twenty-one, and also the stake which marks the north-

west corner of Section Twenty-one, which you believe to have been placed there by the United States surveyors?

A. Yes, sir.

Q. Is there any way, Mr. Howard, by which you can identify a stake as placed by United States surveyors as between one placed by private surveyors, if they should bear the mark which United States surveyor's posts should bear?

665 A. I have never found one that I could not tell the difference between by evidences on the stake, markings on the stake; none that I ever found could be identified as such. The information is such, the familiarity with them out there, that any one at a glance could tell old government stakes.

Q. Well, how do stakes placed in the ground by surveyors of the United States differ from stakes placed in the ground by surveyors not holding official positions?

A. Those that were made fifty or sixty years ago there is a difference; different surveyors would apparently mark them just about the same way, but of late years, why, the marks are different.

Q. Who marks the stake—the man that runs the instrument or the chainman, in the government survey?

A. I could not tell you; that is under the control of the surveyor, himself.

Q. Have you found, in your experience, that the government stakes from time to time have been moved from their true location?

A. Very seldom, indeed; I can't recall now any instance of that happening. I found them apparently moved from the place that the bearing trees locate them.

Q. Haven't you at times moved government corner stakes, yourself, from its location?

A. No, sir.

Q. Never have?

A. Never have.

Q. Have—

A. I do not bother with other surveyors' stakes, either. If I disagree I put in a new stake, myself.

Q. How often have you found the government stakes to be located in accordance with the field notes, and how often at variance with the field notes of the public surveys?

A. I have found them exact sometimes. I don't pass on

the stake as being in its proper location if the courses given do not agree with the trees, the bearing trees, in the proper courses, but it so universal to find that the measure-

666 ments do not bear out in those measurements that I have always tried it, and am governed by the course as to the location.

Q. When, you say you are governed by the course, do you mean to say you are governed by the course laid down by the field notes run by the needle or by the courses blazed on the trees?

A. By examining the trees given as bearing trees I set my compass from the post, and if the courses given by the needle strike the center of the tree or approximately the center of the tree, why, I pass that as correct. If the distance is a few feet more or less, I measure it and decide upon the weight to be given them. If there are four trees and the four courses agree exactly, as they do in this case, the three trees, and up in here four trees, why, I say that is sufficient evidence that that stake is in the exact point (indicating the northeast and the northwest corner of Section Twenty-one).

Q. Please state, Mr. Howard, whether you would depend upon the evidence as given in the field notes, and as run out there by the needle, or the course as placed upon the trees in determining whether the government surveys are correctly located?

A. I did not determine that by the placing of the trees.

Q. Well, did you determine it by the field notes and the course as run out by the needle?

A. I found that the courses—for instance, four degrees given there in the patent notes is indicative, what it should be, which is my idea of what the present variation is according to that.

Q. The course given on the patent as to the variation with which this survey was run in 1851, is four degrees, is it not?

A. That is what I understand it to be.

667 Q. The annual variation is less than three minutes?

A. Something in that neighborhood.

Q. For sixty years, then, it would be one hundred and eighty minutes?

A. Yes, sir.

Q. That would be two degrees?

A. It would be three degrees.

Q. Yes; that would be three degrees. You say you used one degree and forty-eight minutes, which would be an error of forty-eight minutes?

A. That would, if I relied upon that.

Mr. Haskell:

A little less than three.

Mr. Dewhurst:

Yes; that would make it more than forty-eight minutes.

A. It would be one to 1.48.

Q. Now, what was the error you found in the measurement on the east line of Section Twenty-one, as compared with the field notes and your actual measurement on the line?

A. My recollection is, it was 87 feet excess.

Q. Was that east line as measured on the ground longer or shorter than given in the field notes?

A. It was 87 feet longer than given in the field notes; yes, sir. I will state that these measurements all exceeded every one that I made; they originally were made with a chain, the chain in wire. I started in Florida measuring with a chain and at intervals examined it and took up the wire for two or three times, and then I made a mistake in measuring, and then I examined it—it increased in length three inches and three-eighths, and I threw away the chain and got a tape, and in measuring section lines I have found that they will average about that to the mile, or in the neighborhood of
668 thirty feet to the mile in excess of the measurements that were given in the field notes. This was eighty-seven feet, if I recollect rightly.

Q. Now, you have mentioned that at the end of the first day you had run the east line of Section Twenty-one and you found no evidence of any indications on the ground of the south line of the Teresa Rodriguez Grant; is not that your testimony?

A. We did not find it at the point where the field notes gave it, five chains south, nine chains south, and we did find blazed trees along here (indicating) but we searched carefully along here between those lines (indicating) we searched carefully between the two lines for the supposed intervening line.

Q. By the two lines you have just mentioned, you refer to the north line of Section Twenty-one and the blazed line which you found on the Grant 9.10 chains, is that it?

A. Yes, sir; continuing east twenty-two.

Q. Your testimony also showed that the next morning you started to go at the northwest corner of Section Twenty-one and ran down the south line, I think—

A. No, sir; we started at the old stake which we found here (indicating) and ran up here (indicating).

Mr. Cooper:

Mr. Howard, when you say "here," please indicate where you mean, so we can get it in the record.

A. We started at the old stake which we found nine chains and fifty-seven links south of the north line of Section Twenty-one.

Q. And then, from that you located the northwest corner of Section Twenty-one on the ground?

A. I located that on the ground.

669 Q. What was the character of wood—the stake at the northwest corner of Section Twenty-one?

A. Why, a lightwood stake, badly weather-beaten.

Q. What was the nature of the forest about the west line of Section Twenty-one, and the west and north line of Section Twenty-one?

A. Around that region it was open pine woods, very little underbrush.

Q. How many pine trees were standing and how many had burned down, or down, giving the propostion [proportion] of standing trees and the proportion of trees that had been cut?

A. I can't do that; I did not examine the stumps enough to give the proportion except right along the line.

Q. Is it not a fact that the pine trees in the strip of land west of Section Twenty-one, west of the west line of Section Twenty-one, immediately around the corner, had been cut away, cut down and taken away, a great majority of the pine trees?

A. I don't think the majority were taken down—cut away. I can't testify—

Q. How large were the standing trees within a radius of

ten chains to the south and west of the corner post at the northwest corner of Section Twenty-one, that were standing there?

A. They did not give me the impression of having been timbered over, but how many stumps compared with the standing trees, I could not give you an estimate.

Q. How large were the standing trees?

A. Oh, there were some large ones there.

Q. What do you call large?

A. Twelve to eighteen inches in diameter, scattering trees

Q. How far apart were they scattered?

A. My impression is now that located along this
670 line (indicating) from there to there, distance of four chains, 4.24, that right close to the line there were six or eight trees, good large size, in there.

Q. From twelve to eighteen inches?

A. Yes, sir.

Q. Had those trees been turpentined or boxed for turpentine?

A. I don't think they had.

Mr. Jones:

Q. Had the trees along the north line of Section Twenty-one south ever been boxed for turpentine?

A. I didn't go along the north line only a short distance.

Q. How far did you go on that line?

A. Between there and there. (Indicating).

Q. Then, you went on the north line of Section Twenty 4.22 chains and didn't go on the north line of Section Twenty-one at all?

A. Only a few feet, at the neighborhood of the section corner.

Q. About how scattering were the pine trees along the line which you found blazed, nine chains and fifty-seven links north of the north line of Section Twenty-one?

A. I could only estimate roughly—they were found blazed on perhaps a dozen trees from there to here (indicating); I suppose we found a dozen trees that we found blazed. That is simply an estimate; I didn't count them.

Q. On which side of the line were those blazed trees?

A. I can't state that they were more on one side than the other.

Q. Then, there would be about three on one side and three on the other?

A. I don't know, sir.

Q. According to your recollection?

A. I said approximately there was in the neigh-
671 borhood of a dozen.

Q. According to your recollection, then, there were standing about six on the south side of the line and six on the north side of the line?

A. I should not want to put it in that form. I say I found them along the line, they were marked.

Q. Well, how many did you find?

A. I have indicated about a dozen, I should judge, in that distance, there were other large trees that were not marked; there were some marks on some trees, I should judge, as having been old marks, they were not altogether old marks.

Q. Then, you found trees having blazed marks on them which you rejected as not marking the correct mark?

A. Yes, sir.

Q. What was the location of those trees scattered along?

A. I didn't locate them.

Q. Were they many of them?

A. I can't state; just roughly, from memory, I should say about the same as the old trees, about a dozen I should think would be near enough to say.

Q. You stated in your direct testimony that you went there to locate the south line of the Theresa Rodriguez Grant?

A. Yes, sir.

Q. How, then, was it when you found other trees having blazed marks that you did not pay attention to them, to see whether or not they were not on the correct line?

A. Because I looked after them and did not find them.

Q. But you did find trees that were blazed, which you rejected on the true line, on the line you found old blazes on; why did you reject those trees?

A. Because the marks were, apparently, not over fifteen years of age or perhaps twenty.

Q. Is it not a fact that the trees along the north
672 part of Section Twenty-one, extending from the section in the vicinity of the line which you found to be blazed, had been turpentined?

A. I made no examination to know what had been tur-

pentine and what had not, but I understood that there had been turpentining over that land. I didn't make any examination beyond the line how far they were.

Q. Were there blazed trees along this line which you ran, which you ran and declared to be the south line of the Rodriguez Grant—trees which had been turpentined?

A. Why, from recollection, I should say I don't remember that they were.

Q. You don't remember that they were not?

A. Well, no; I didn't say. I remember now, distinctly, one or two trees that had large turpentine blazes upon them. I understood that turpentining had gone over the line before. I made no note of it at all, but I remember in one particular tree that the place burned by the turpentine running out—

A. [Q.] What is the appearance of a tree that has been blazed by the government surveyors, to mark the public survey?

A. I find that the grant lines have largely been marked by a blaze section lines by a blaze and two axe cuts.

Q. How are the Spanish grant lines marked?

A. Usually by blazes.

Q. Then, the proper definition of the south line of the Theresa Rodriguez Grant upon the ground would be blazing of the pine trees along the line as run by the surveyor with his compass?

A. That is the indications; yes, sir.

Q. That would be the blazes?

A. In connection with other things that would be strong presumptive evidence.

Q. Was that the line that you were seeking to find, the blazed line?

673 A. Yes; seeking to find the blazed line and the monuments that could be found pointed out as indicated in the field notes.

Q. Now, what monuments of the Theresa Rodriguez Grant do you claim to have found on the south line?

A. Starting with the old stake at the southwest corner on the line the distance given in the field notes to the pond; the fact of the chaining of that line at all would increase the distance from the west line of the Grant by an equal amount; the blazed trees beyond and the statement that it crosses at the section line that branch or spring, which was indefinitely stated.

to be sure—it locates it somewhere close to that spring after crossing the section line.

Q. Do the field notes locate the south line close to the spring run?

A. They locate it apparently where we found it.

Q. Wasn't your direct testimony that it did not?

A. The blazed line did not cross the—

Q. No; that the field notes did not locate it where the south line crosses Sulphur Springs run?

A. No; I did not touch that point in my testimony. It crosses it something like several chains to the eastward of where it crosses the run; the run comes up this way (indicating). Crosses the line to the eastward of the spring about the distance given in the field notes.

Q. It run to the eastward of the spring?

A. Yes, sir; it run to the eastward of the spring; it is a well defined line about the distance given in the field notes.

Q. You are talking of the east line of twenty-one?

A. I am talking of the south line of the grant—crosses the run of the spring at about the distance given by the field notes beyond the east line of Section Twenty-one.

Q. Then, when you started to make your survey, did you have the plat of the Theresa Rodriguez grant before you?

A. I did.

Q. Why did you not then follow the survey as
674 indicated upon the plat, if you went out to locate the true south line of the Grant?

A. We did not follow it from the fact we could not find any indication of the line on the east line of Section Twenty-one, and it did not cross the run of this spring at the proper distance south from the section corner; it would not cross the run of the spring for a long distance.

Q. Then, you had with you the field notes of the Theresa Rodriguez Grant and the plat of the Rodriguez Grant; you went there to locate the south line of this Grant; you did not undertake to locate it where the field notes or the plat indicated it was?

A. Oh, yes, we did; we undertook to find it there, we did not find it.

Q. Then, what actually occurred was, you started with the plat of the Rodriguez Grant, with the field notes of the Rodriguez Grant, and instead of running the line which the

field notes and the plat declared and indicated to be the true line, you chose to follow a blazed line on the trees four chains and more south of where the field notes and plat indicated they were?

A. Yes, sir.

Q. And then when you did that you change the location of the Grant line by four chains to conform to certain blazes which you found on trees?

A. And other landmarks and blazes correctly set. Post at the southwest corner, blazed line running north from it and east from it on the lines of the Grant as given in the field notes.

Q. When you started to make this survey, did you know that it was absolutely essential to the maintenance of this case that the shanty should be found north of the south line of the Theresa Rodriguez Grant?

A. Yes, sir; that was told me.

Q. You knew that before you started out?

A. Yes.

675 Q. How much influence did that have in your failing to follow your field notes and your plat, when you located what you claim to be the south line of the Grant?

A. I don't know, except from the testimony of the witnesses for the other side, where the cabin was located. I did not know it until after I had made a thorough examination up here (indicating) according to the field notes, to locate that line, and utterly failed to find it, and I did find this line of blazes down here, and that they were nearly agreed with what the field notes of the Grant said, as to the location by the spring.

Q. But you did know the testimony of the three surveyors who testified that the shanty was not on the Grant before you started?

A. Yes, I did.

Q. How long ago did you make this survey?

A. This was made on—

Q. Approximately?

A. About two weeks ago.

Q. What is the season relative to its being wet or dry season at the present time?

A. Very dry.

Q. Extremely dry, is it not?

A. Yes, sir.

Q. How does it compare with the ordinary dry season?

A. Well, at this time of the year it is usually dry.

Q. Well, is it not a fact that—

A. It is about the same, not quite so bad as it was two years ago this time; two years ago the ponds were dry—now they have a little water in them.

Q. What is the rainy season in Florida?

A. Summer.

Q. Then, in June, 1851, it would have been likely to have been in the rainy season, would it not?

A. Yes.

676 Q. State, in regard to blazes, what difference in appearance there would be between a tree blazed thirty years ago from a tree blazed forty years ago, in its present appearance?

A. Well, they would have grown up a little more.

Q. How much more?

A. That varies upon the different trees; you can't put a statement on it.

Q. Can you state, within any reasonable degree of accuracy, whether a tree has been blazed thirty years or forty years?

A. As I said when I commenced, fifty or sixty years, that these trees were about the age. I would not say they were exactly fifty years or sixty years; I would say thirty or forty, coming down to late blazes I would say fifteen or twenty; trees grow different at different times; dry times they are very slow growth.

Q. These blazes you took to be blazes indicating the south line of the Theresa Rodriguez Grant, looked to you to have been more than twenty years old, did they?

A. Oh, certainly; I said the new blazes were fifteen or twenty. In my judgment, they were more than double the age.

Q. Did you cut into any of the trees which you thought indicated the south line of the Theresa Rodriguez Grant to find the actual blazes?

A. No, sir; I did not.

Q. As a surveyor tracing over lines, have you not adopted the practice to find blazes?

A. I do not, except where the blazes are badly scattered

and indistinct, and when they are thoroughly grown over. I have seen blazes that were perhaps twenty-five or thirty years that were grown up. Mr. S. B. Wilson at one time undertook to show me a line of old blazes, went and cut out the blazes. After he had gone, I investigated it and found it was not as old as he thought it was. I had rejected it as being on the line.

677 Q. Then, these blazed trees on the line which you surveyed as the south line of the Theresa Rodriguez Grant had not grown over the blaze?

A. I can't state positively now, but what some had grown over.

Q. And some showed the mark outside?

A. Yes, sir; I simply said that—

Q. Old blazes and still open?

A. They were still open; yes, sir.

Q. The blazes put there according to your belief sixty years ago was still open?

A. Yes, sir.

Q. And those blazes you stated as the blazes put there by the United States surveyors in 1851?

A. Yes, sir. Some of them, I think there were one or two on that line particularly in this way; the old axe marks were visible and the blazes had been kept open by burning below it; many other of the old blazes showed the tract of the burning inside the blaze.

Q. If those blazes had been burned over, how could you conclude that they had any particular age?

A. The amount of the burning and the depth of the blaze on the trees.

Q. If in 1871 those trees had been blazed and had been burned from year to year since, could you have stated that the age of the blaze would have made the appearance other than what you actually found?

A. Yes; I think it would have made a difference.

Q. What difference would it have made?

A. Well, if there had been much burning it would have been made in a large cat-face in its general appearance.

678 Q. What difference in appearance would those blazes have had, if made in 1871 and burned over from time to time, than trees having been blazed in 1851 and burned over from time to time during the years?

A. Well, those in 1851, if they had been burned from time to time, they would have been obliterated, old blazes, some of them show a large cat-face and the burn that was apparently an old blaze.

Q. You don't answer the question; what difference it would have been?

A. Yes; the difference—it would have been enlarged below the blaze, so there would have been a large opening, the pitch runs down—

Q. Did these trees have a large opening?

A. Some had a very small opening, quite deep.

Q. You say these trees with the small opening quite deep, were blazes which were put there in 1851 by the United States surveyors?

A. That was my judgment; yes, sir.

Q. How do you bring yourself to that judgment as to what particular feature of the tree, causes you to come to that judgment?

A. Well, an examination of the individual tree; I can't go into all the details. In the examination of the individual tree I have got to base my judgment upon it.

Q. Well, can you state so that the Court can know, any reason that impels you to believe that they were made sixty years ago and not thirty?

A. It is quite probable that anything within thirty years would not be but about half the depth those were. Many old blazes in that long time are entirely indefinite; many of them, the mark being entirely obliterated so you can hardly determine it, but they usually show some mark so you can come in and find old blazes, and burned blazes hardly ever close up where there has been burning in the blaze.

679 Q. What is the character of the soil along this line, coming on down here? (Indicating).

A. Why, it is medium Florida soil.

Q. What would be the growth of a tree, slow growth or ordinary growth?

A. I should not think it would be a very fast growth there; it is not so slow as some—

Q. Then, you found on the ground two lines of blazes, one made about fifteen years ago, which you rejected and one which you think was made about sixty years ago?

A. Yes; I said fifteen or twenty, and I said fifty or sixty.

Q. And those were the only two which you found?

A. Those were the only two lines of blazes which I found in my survey.

Q. Then, if there was a survey made in 1871 of the south line of the Theresa Rodriguez Grant and blazes upon the trees, and another one made about 1880 and blazes upon the trees, and one made in 1851 and blazes upon the trees, there must have been two that was blazed on the same line, was there not?

A. There were two of those blazes made at two different times on that line.

Q. But if there had been three surveys made and three sets of blazes made, two of them must have been on the same tree?

A. There were on the same tree, old blazes and the new; yes, sir.

Q. Why didn't you make that statement in your direct examination?

A. I do not recall that it was brought out in any way. I did not think it was important.

Q. You think it is importatnt now?

A. I don't know that it is.

Q. You recognize that it is important?

A. The latter blazes, I did not think it was important to refer to those.

Q. But you found some later blazes on the same
680 tree in which you found old blazes?

A. Yes; on some trees I found later blazes on which there were old blazes.

Q. You stated in your direct examination that the other witnesses were prepared to testify as to certain—

A. I said in the neighborhood of this—

Q. What do you know what the other witnesses are prepared to testify to?

A. Simply because I heard them say so, and I saw them going through the woods. I was kept busy by my chaining and also running the transit. Mr. Morehead was running the transit, but I looked through it, saw that the needle was set right and pointed out; he did more measurement than I did in that way.

Q. How do you know what the other witnesses are prepared to testify to?

A. I do not testify that they are prepared to testify. I simply put that in as my understanding. I think it was aside to Mr. Cooper.

Q. You said that near the southwest corner as you located it, of the Rodriguez Grant you found a hole in the ground?

A. Yes, sir.

Q. What did that indicate to you?

A. It indicated a burned-out stump.

Q. How large a hole in the ground was that?

A. It was a foot and a half or two feet in diameter.

Q. How deep?

A. I didn't sound the depth of it; apparently about the same depth.

Q. Foot and a half or two feet in depth?

A. Yes, sir; apparently.

Q. About how far, if you located the center of any other tree, if it had been a hole made by burning out of a stump of a tree?

A. Well, the line of sight would pass over the
681 hole, taking the proper course.

Q. Was that the only evidence of bearing tree which you found as given in the field notes?

A. That was the only evidence of bearing.

Q. Did you follow up the west line of the Theresa Rodriguez Grant to a point which was westerly from the northwest quarter of Section Twenty-one?

A. Yes, sir; measured the distance up and went up and examined it.

Q. What was the character of the blazes along that line?

A. I cannot give you the character of the blazes along that line.

Q. You don't know about them. How often were there line trees to be found on that line?

A. I couldn't tell you—I don't know.

Q. You stated, if you had followed your plat and your field notes and ran the south line of the Rodriguez Grant five chains and thirty-six links south of the north line of Section Twenty-one as it is given in the field notes, that you would have struck the pond four chains further to the east than the distance given in the field notes?

A. The north end of the pond was about four chains; we would have run right on the edge of the pond apparently, so

it would hardly be noted as crossing the pond. Now, I stopped on the point, I saw the high water mark, high water had ever been.

Q. How do you know how high the water had been?

A. By the palmetto bushes around there.

Q. Have you been there at wet times?

A. I have been in those woods.

Q. Then, the similarity of water in this pond by the general nature of the ponds?

A. By the general nature of ponds and by the fact that the growth on the borders of the pond shows.

Q. If the field notes of the survey which you
682 were retracing, which stated that the distance to a pond was twenty chains and you found the pond in a dry time to be sixteen chains, which would you say was the correct point; as it was in the dry time or the field notes?

A. I would not take the borders in a dry time to be the point. I would take the high water mark; surveyors generally would take the high water mark and say we struck a pond knowing it was a dry time, if it was a chain or two further.

Q. You say you had the plat of the Rodriguez Grant when you made the survey; how many chains in depth would be required to make twenty-two acres of land if the line ran east and west, say forty chains long?

A. Forty chains line would be about five and a half chains broad.

Q. Now, if the plat and the field notes made the south line of the Rodriguez Grant where it ran through Section Twenty-one five chains and thirty-six links south of the north line of Section Twenty-one, if Section Twenty-one was surveyed as a full section, then a half section of forty chains and five chains and thirty-six links in depth would make just about twenty-two acres, would it not?

A. Yes; about twenty-two and a half acres.

Q. Then, if Section Twenty-one appears on the public plats as containing in its fractional northwest corner thirty-eight and thirty-one hundredths acres, what would be the true distance of the north line of that fractional Section Twenty-one south of north line of Section Twenty-one, if it was surveyed as a full section?

A. Why, that distance, of course—

Q. Then, now you say that if your survey of the Theresa

Rodriguez Grant is correct, then the entire government plat is wrong?

A. That is evident.

Q. That is, self-evident?

A. It is evident.

683 Q. The whole thing must fall. Now, then, if the United States has patented the northwest quarter of Section Twenty-one as one hundred and thirty-eight acres, what was the survey under which that was patented, so far as the location of the north line of fractional Section Twenty-one, as to its relative location of the north line of Section Twenty-one, surveyed as a full section?

A. I should have to figure it out. It comes out over the acreage given in the plat. Under that supposition I answer it would come out twenty-two acres.

Mr. Jones:

Q. You don't care to stop to figure it?

A. Why, that is near enough; it adds so much to the Grant. I have another just such case happening in other grants in Volusia County.

Q. If the plat, government plat, of Township Nineteen, Range Twenty-eight, shows the ares [acres] of the northeast quarter of fractional Section Twenty-one to be 138.30 acres, the same result would follow on the northeast quarter of the fractional section as you have stated followed the northwest quarter?

A. Yes; the line would cut off just about as much.

Q. Cut off about twenty-two acres?

A. About twenty odd acres. There is just such a case in Miami that I was on—five chains further to the west, and there was an error in the township line; it was eighty-five chains long and he said eighty; the Miami River was located five chains further west that it should have been on the map.

684 Q. Then, taking your sketch as you have signed here, and locating the south line of the Theresa Rodriguez Grant as it is located here—locating the north line of Section Twenty-one as surveyed as a full section and the northwest corner post as there located, and the northeast corner post as there located on the sketch, and drawing on it a line which is described in the field notes as the south line of the Theresa Rodriguez Grant, five chains and thirty-six

links south of that north line of Section Twenty-one, and also as it is described upon the plats of the Theresa Rodriguez grant and the plats of the public surveys of fractional sections in Township Nineteen, South, Range Twenty-eight, East, surveyed in said township with the Spanish Grant, would that south line of the Theresa Rodriguez Grant as it is located in accordance with the field notes and in accordance with the plat, be north of the shanty?

A. It would be north.

Mr. Cooper:

We object to that question, on the ground the question only partly describes the line by distances, and does not describe the line according to the field notes, and the question assumes a fact that the line is the distance given on the plat.

Q. How far north of the cabin would that line, as so located, run?

A. It would be one hundred and ninety feet south of the supposed line according to the field notes.

Q. You say "Supposed line," is it not a line which is shown on the plat and which is fully described in the field notes—something besides a supposed line?

A. Well, now I should say not; inasmuch as the witnesses on the other side did not identify it as a positive line.

Q. But if the field notes and the plat of the Spanish Grant make a line which corresponds with the acreage of the sections of the public surveys surveying all around it, is not that something besides a supposed line?

A. The line that coincides with the acreage given
685 on the government plat is made up in the Washington office, and if they found it was 5.60 chains they would make the acreage according to that, but if he was mistaken in that one measurement and that the whole thing was based upon that one mistake, and that the monuments upon the ground took in four chains more, the acreage would at once go to follow the lines testified to by the monuments and indications on the ground.

Q. Do you know that that those monuments on the ground were placed there by M. A. Williams, in 1851?

A. I only judge that they were; I was not there. I was just going to school then.

Q. Did they survey the Theresa Rodriguez Grant so as to verify the line by the area in that Grant?

A. *No*; I never do investigate the area until I find out the lines; the area is a secondary consideration, and is tabulated in the office at Washington.

Q. Then, you cannot say that the lines actually run on the ground by M. A. Williams in 1851, if they were five chains and thirty-five links—if the south line of the Theresa Rodriguez Grant did locate by the five chains and thirty-five links south of the north line of Sections Twenty to Twenty-four, inclusive, would make the proper area of the Theresa Rodriguez Grant if his north and south lines, as located on the Grant, were as given on the plats and in the field notes?

A. I have not; I have not investigated the area at all. It is a matter anybody can estimate it, but I have not done so. I presume it is correct; that they would not make such a mistake in the office in drawing up the plat, as to get the acreage right and the measurement wrong.

Q. Is it not a fact that the Spanish Grant, when surveyed in a township containing sections surveyed as public lands, notes the intersections of the lines of the survey of the Spanish Grant with each section and half section line of the public lands abutting on?

A. Yes; the United States surveys largely have—

686 I think this is one of the cases—I think this was one of the cases in the notes—largely the surveyed line is run out into the lines and the sections for the Grant, and then it goes up to Washington and reported if it is deficient with the section line. It was forwarded back to some other surveyor and he was told to connect it with the section lines. The grant lines are frequently that way in Volusia County, and the surveyor—he had done as I did.

Q. Your testimony is then, that in this case you think the Spanish Grant was first located in that township and then lands embraced in the public survey were made to fit in that?

A. No; I think the subdivision of the section was made before the grant, but that the surveyor in locating the grant lines omitted to connect it with the section lines and give the distance in the corners.

Q. You think in this case the surveyor who surveyed the Rodriguez Grant has omitted to give the distance as the section

lines and half-sections as to the survey of the exterior of the grant?

A. That was my supposition, that is all.

Q. Didn't you have the field notes of the Grant when you made this?

A. Yes, sir.

Q. Didn't the field notes on the face show the territory show the fact—didn't you so testify?

A. No, sir; they don't give it in full.

Q. That is the point I would like to know?

A. I didn't understand it so.

Q. Did they not give on the west line of the
687 Grant the distance run on the grant line to make the intersecting section lines of the section which abutted on the west line of the grant?

A. Yes, sir.

Q. Did you verify those?

Q. They were obliged to send on and get them so they made up the plats.

Q. In making your survey on the ground, did you verify your memorandum in the field notes as to the intersection of the west line of the Theresa Rodriguez Grant with the several section lines of the sections abutting it on the west?

A. No, sir; I didn't go north on the north line of Section Twenty.

(That's all).

Cross-Examination.

Mr. Jones:

Q. What is the distance, did you find, from that supposed corner which you call the southwest corner of the grant to that grass pond?

A. Fifty-one chains and ninety links, very near a chain over; that was to what I judge the highwater mark.

Q. Then, it was not exactly as it is stated in the field notes?

A. No; I measured it with the tape, with the chain.

Q. Do you know if they did it with a chain when there?

A. I was not there, but I know they did not use the tape at that time; they used chains.

Q. Could you tell whether it was an old chain or a new chain?

A. I could not tell you that, sir, with the exception that I found on the section line was eighty-seven links from here (indicating) and to this point here (indicating) was ninety links, shows that the tape measures more than the chain.

Q. You stated that you did not find the field
688 notes to agree where it says "eighty-three chains and eighty links across the west line of Section Twenty-two in the edge of the branch," that did not correspond?

A. That was the edge of the branch, but you will find in the field notes it says that they crossed the line of the branch further on. The cross close to the sink hole where the section line crosses, but did not cross the branch until five chains, something like five or six chains further on.

Q. Did you go to where it crosses the branch?

A. Yes, sir.

Q. Don't you know that that branch flows east a little and then north for nearly three or four chains, and then flows northeasterly?

A. I know it flows northeasterly from the spring for apiece and easterly, southeasterly and northeasterly; I can't say that it flows westward at all.

Q. Don't you know that it flows eastward at first and then almost due north and then eastward?

A. No; I don't say it flows northerly. I crosses up here (indicating) this direction, turns that way (indicating).

Q. How do you reconcile the field notes when it says it crosses in the edge of the branch 83.80 chains?

A. Now, this note in the patent says eighty-five chains.

Q. It says, in crossing a branch or spring—

A. 83.50 crosses section line eighty-five chains, crosses branch,-eighty-five chains crosses branch or creek.

Q. But doesn't it say it crosses section line in the edge of the branch?

A. Yes, sir: "in the edge of the branch of White Sulphur Springs."

Q. Then, how could it cross the branch there and further on, if the branch flowed northeasterly?

A. It says above here at eighty-three and a half
689 and eighty-five chains it crosses branch—there is

only one branch taking that course, flows right up both sides.

Q. Then, it does not cross the section line in the edge of the branch?

A. It does not cross it in the edge of the branch, it crosses at eighty-five chains; there is eighty-three and a half and eighty-five chains both given.

Q. Then, it does not cross the branch on section line twenty-two in the edge of the branch?

A. In the edge of the branch, it crosses on the edge of the coming down to the spring, passes close to the spring; you could hardly say whether it was the spring or the branch, and on the brow of the hill is where this line crosses, and then passes on; it says eighty-five chains cross branch or creek, eighty-five chains brings it within a chain and a half, and that is very near the distance where it says it crosses it.

(That's all).

Mr. Dewhurst:

Q. In your direct examination you stated that you could not locate the south line of the Grant 5.36 south of the north line of Section Twenty-one; state whether or not—

A. Yes; the notes call it 5.36.

Q. 5.36, your testimony is 5.35—that is right, 5.35. State whether or not you tried to locate on the ground a south line of the Theresa Rodriguez Grant at any other place than in between the east and west lines of Section Twenty-one in that vicinity?

A. I went into Section Twenty-two, out this way (indicating, into the next section perhaps ten chains or more, but were unable to find any marks to the edge of the swamp—some ten chains I should guess it was.

690 Q. Then, as a fact, your survey on the ground to locate the true line, true south line of the Theresa Rodriguez Grant, did not extend further eastward than about ten chains from the northeast corner of Section Twenty-one?

A. At 5.35 chains south of the section line it did not extend any further east.

Q. Why did you not pursue your investigation through sections twenty-two, twenty-three and twenty-four of the public

surveys to where those fractional sections abutted on the south line of the Grant?

A. I was not commissioned to search any further than to ascertain where it passed through Section Twenty-one, and I did not feel authorized to make it exceed more than what I was told to do.

Q. As a matter of fact, then, you have no knowledge of whether or not blazed trees existed on those three sections 22, 23 and 24, where the north line of those fractinal sections abutt on the south line of the Theresa Rodriguez Grant?

A. I have one reason for not pursuing any further, you care for me to state it? It is this: in investigating this map I found that line from there to there (indicating) is 74.55 chains, the west line of Section Twenty-one is 74.55 chains, the east line is 74.60, the east line of twenty-two is 74.60, and the other is 74.70.

Mr. Jones:

Q. Did you run the west line of twenty-one?

A. No; I was not running the west line of twenty-one. I did not think it necessary.

691 Mr. Dewhurst:

Q. If the public surveys at first had been run, and all of the lands in the township had been deemed to be public lands, and the United States had set apart to residents 5426.82 acres of land, could it have been done as office work and not field work?

A. They could have set apart five thousand acres, but when they attach the field notes to it, the monuments and the indications on the ground, you have covered the locations on the ground.

Q. But if the township had been surveyed as public lands, and the United States had set apart to the heirs of Theresa Rodriguez 5,426.82 acres and had done it in the office, why would it not have been a valid location of the ground?

Mr. Cooper:

We object to that as seeking a conclusion of the witness.

A. No, I could not state that these—

Q. (Interjecting) That was the reason that you did not

make any further survey of the south line of the grant on the ground to find if there was blazes to correspond with the plats and the field notes, because you made up your mind that the public survey was office work and not field work?

A. Yes, I say there is four lines, which increases five links on each line exactly. I say that would be impossible to do it on the ground with the way the surveys was made, and that it was office work.

Q. That was the reason then?

A. That was a strong reason; it was not the whole reason, but it was a strong reason.

Q. It was a strong reason why you did not investigate on the ground to find out—

A. No, I was limited by my instructions as to investigating the line through Section Twenty-one.

Q. You have testified in your direct examination that certain blazes and location of this line was the true location of the line as surveyed by the United States "in our judgment": what do you mean by "our judgment"?

692 A. A surveyor has got to use his judgment on the ground and the instructions from the United States Land Department.

Q. My question refers to the pronoun "our"; what did you mean when you said "our judgment"?

A. Well, the others expressed themselves to me. My judgment would be probably better.

Q. You mean, then, the combined judgment of yourself, Mr. Owen and Mr. Morehead was taken upon this point?

A. Why, taken on the monuments on the ground.

Q. And you three were employed by the Wilson Cypress Company to go out and locate that line?

A. Yes, sir.

Q. And you took your combined judgment upon these various points?

A. Yes, sir.

Q. Especially as to the location of the cabin?

A. The location of the cabin depended upon the location of the line in our judgment.

Q. And the location of the line depended upon the location of the cabin?

A. I did not say that.

Q. Whose cabin was it?

A. I can only tell that from hearsay.
Q. It was the only cabin that was visible anywhere?
A. You will have to ask some one else.
Q. What was your understanding about the cabin?

Mr. Cooper:
We object to that evidence as hearsay as to the cabin.

Q. What was your understanding as to the ownership of the cabin?

Mr. Cooper:
The witness has stated he did not know of his own knowledge.

693 A. I can answer what was told me, that it was the cabin that was claimed to be in Wilson Cypress Company, to be owned by them.
Q. You stated that the stake at the southwest corner of the grant line had no bearing marks upon it, that there were no bearing trees from that?
A. There were no live trees there.
Q. Did that stake—you have stated that that stake appeared of equal age with the stakes that marked the northwest and the northeast corners of Section Twenty-one?
A. In my judgment, it did.
Q. Do you claim that your judgment can determine the age of a lightwood stake from forty to sixty years old within—to determine it is forty or sixty years old—do you claim that power?
A. I simply claim to be approximately to it.
Q. How near do you think you can approximate the age of a stake?
A. I should have to have the stake before me to scratch my head and think over it; I couldn't tell how near I would approximate it.
Q. Did anybody point out to you—
A. One stake may be more indefinite in age than others.
Q. Did anybody point out to you this stake as the southwest corner of the Rodriguez grant?
A. Mr. Morehead went on it at the time and saw it the

first day, and I found him seated by the stake when I reached there.

Q. You don't know who pointed it out to Mr. Morehead?

A. He found it running the blazed line west from the spring.

Q. How do you know he found it by running a line?

A. You will have to take his testimony for that; I took his word.

694 Q. Where was Mr. Owens at this time?

A. Mr. Owen and I were in the buggy and drove around, and Mr. Morehead thought he would follow it. That was after we had finished our work; we started around to spend the night. He took his compass and went along that line, and he reached the stake; we went and hitched up the team and drove around, and Mr. Owens was off the track a little; at the same time Mr. Owens knew where it was and Mr. Morehead did not, and he followed the blazed line to it.

Q. This blazed line a distinct mark?

A. Yes, sir.

Q. So distinct Mr. Morehead could easily follow it?

A. Yes, he followed it by compass and by courses.

Q. You know of any other blazed line sixty years old?

A. I have already testified about the second line previous to this.

Q. Then which did he follow—the new blazes or the old blazes?

A. They were both—they were apparently the same line, as close as they could be blazed.

Q. Did Mr. Owens make any explanation of why he didn't take you direct to that stake?

A. Why, it was through the woods; there was a certain tramway he thought would take us right by there; he found he was a little off the track, and then he come up and took his compass and directed us how to go; the wagon track was leading away from it.

Q. He thought that when he first went there that the wagon track would take him directly to that point?

695 A. No, sir; he thought there was a blind tramway—he was looking for it, but he failed to catch it; after we passed where it was, he saw he was going wrong and turned back.

Q. He started out to take you to that corner?

A. To the corner in the buggy, but took up those two men.

Q. He started out to undertake to take you to the southwest corner of the grant?

A. Yes, sir; in the buggy. He knew that it was about a mile west; he said that he could not fail to find it. They started down through the woods in a direct line and we went around about.

Q. And then he assumed to know where it was?

A. Yes, sir.

Q. You stated in your direct examination, that you did not look carefully for other blazed lines running east beside the blazed line which you took to be the south line of the Rodriguez grant; why didn't you look carefully if you were sent there to locate the true line of the grant, and had your field notes and your plats, which showed that this blazed line did not correspond with that; why didn't you look carefully to find blazed line?

A. I did not see any other indications of a line.

Q. State then how it is that you can testify as you have in your direct examination, that as an expert surveyor you believe the south line as you have indicated upon your sketch is the true south line—indicates the true south line of the Theresa Rodriguez grant, in the face of the plats and the field notes and calculation and area of the fractional sections abutting on?

A. The calculated area never enters into my calculations until I determine the lines, and as to the reasons, your questions covered those points before, and my answer covers it. I did testify as to my reasons for deciding upon this as the line.

Q. How do you explain your failure to search for any other blazed line?

696 A. I did not fail to search for any other: I have testified to what I did search.

Q. How do you fail to explain the fact you did not look carefully for any other?

Mr. Cooper:

We have no objection to the witness answering the question, but it seems to me that you have been over and over the same thing.

A. I did search carefully the distance of ten chains and back here.

(That's all.)

Mr. Jones:

Q. You mentioned a hole in the ground, which you said was bearing from the post that you concluded was the southwest corner of the grant; please state if that hole in the ground was the proper distance as indicated by the field notes?

A. It was north sixty degrees east sixty feet from the stake.

Q. Did you testify that it was sixty feet from the stake?

A. Yes, sir.

Q. Please state the relative size between those post at the original southwest corner of the grant and other section posts?

A. The side of it?

Q. At the northwest corner of section twenty-one, or the northeast corner of twenty-one, or the general size of section posts?

A. The section posts at the corner of section twenty-one that we saw were about the usual size; this post at the grant corner was about the size of the grant post; it was quite considerable large.

Mr. Dewhurst:

Q. You stated that the posts used in marking the corners of Spanish grants by the United States surveyors are larger than the posts used than marking the corners of public lands?

697

A. I said I frequently found them larger considerably; this was considerably larger.

Q. Well, how frequently?

A. Well, it depends upon the supply of wood in the neighborhood and other matters.

Q. Well, what particular Spanish grant have you surveyed on which the posts marking its corners were larger than the posts used on surrounding public lands?

A. Well, now I can't give definitely any statement in regard to that. There was a large post on the northwest corner of the Alversa grant, in Volusia County, purporting to be for five hundred acres; I found the old stake there and some three hundred feet south of it I found the stake for the government

surveyors, apparently an old stake, south fourteen degrees east from it—

Mr. Dewhurst:

Mr. Dowling, I don't care about all this going down. I object to all this statement. Any particular Spanish grants having corner posts larger than the corner posts of the public lands in that vicinity?

A. Well, there is the Martin tract in New Smyrna, the I. Martin tract.

Q. How much larger was the post?

A. Very large; the size of this post.

Q. Any other grant that you can remember?

A. I will not be confined to my memory in that.

(That's all.)

698 Re-Direct Examination.

Mr. Cooper:

Q. Mr. Howard, you have mentioned your instructions in finding this south line of the Rodriguez grant. Will you please state what your instructions were with reference to finding this line?

A. Mr. Wilson, Sr., said in my presence—I am not certain whether it was directed to me or Mr. Morehead—I think he gave Mr. Morehead more particular instructions than he did to me—he said, "What I want you to do is to investigate and determine that south line of the grant through section twenty-one, and determine whether that cabin is north or south of it, and how far north." That, as far as I know, was the general instructions he mentioned and gave to me.

Q. You recollect what the instructions were that I gave on consulting with you and Mr. Owens relative to finding this line; you recollect what my statement was?

A. I am not able to give that accurately without refreshing my memory. I think, though, that Mr. Wilson had more talk with Mr. Morehead than I.

Q. Were you instructed to find that line south of the cabin or what were your instructions?

A. No, sir.

Q. What were your instructions?

A. It was to determine whether the grant line lay—whether it was north or south of the cabin.

A. In other words, you were instructed to find out the facts?

A. To find out the facts on the ground.

Q. Mr. Howard, will you state whether or not the fact that you were employed by the Wilson Cypress Company would have any effect on your testimony or your efforts in making that survey correctly?

A. I don't feel that it would.

699 Q. Did you have any interest in the outcome of this case?

A. Nothing at all. In fact, at the close of the first day I was very uncertain as to the outcome, as to what the outcome would be; I had not seen the grant corner and knew not what they were up there, but I was strongly of the impression that there was some mistake about it.

Q. Will you state whether or not in your opinion the fact of whether it was a rainy season or a dry season would change the distance given to that spring run on the east line of section twenty-one?

A. It was impossible to change it; the bank rose up from both sides.

Q. As I understand, the line comes near to the edge of the bank?

A. Comes to the edge of the sink hole; the line passes almost directly through the spring, where the water runs out of the spring.

Q. The blazed line you found across?

A. The section line almost crosses the spring itself, you might say.

Q. Where the blazed line intersects with the section line—is that near the spring, or north of the spring?

A. It is a hundred and thirty-three feet north of the spring, up at the tip or rise of the ground.

Q. Mr. Howard, wouldn't it be a natural sequence and extremely probable, that a plat which showed the distance of the lines incorrect, would show the acreage also incorrect?

A. It certainly would.

Q. Mr. Howard, you testified that this house is about, I believe, one hundred and ninety-three feet south of the line according to the field notes?

700 A. Or five hundred and thirty-five chains.

Q. Does that refer to the distance given in the field notes or other evidence or guides?

A. Simply refers to the distance south of the section line given by the field notes and the southwest corner of the grant; the figures are only a partial guide.

Q. Mr. Howard, will you please state whether or not you have ever in your experience in making surveys of government lines according to government surveys, found acreage of sections greater than area of sections by actual stakes and boundaries than given on the blaze?

A. Oh, yes.

Q. State what you can about that?

A. Yes, almost invariably, as I measure through with a tape longer than a mile on the side of the section that at once will increase the acreage.

Q. Will you state, Mr. Howard, whether the distance from the corner stake, northwest corner of section twenty-one, to the intersection of the western boundary line to the north line of twenty, is the distance called for by the field notes according to your actual survey?

A. The field notes call for 3.80; we found it 1.42.

Q. Then, the boundary line as blazed and located on the west is also further from the section line than the field notes call for?

A. Yes, it is forty-two links further.

Q. Mr. Howard, from your investigation of that spring—if the south boundary line of the grant were actually the distance from the north boundary line of twenty-one given by the field notes and the plat—that is, the government plat—would that line strike that run, as the field notes require it to?

A. It says it crosses run at eighty-five chains, and passes section line at 83.50—that is only a chain and a half more, where it would cross if it were five chains and thirty-

701 five links south. It would take in the neighborhood of ten chains to cross it, to reach the stream, which I judge to pass through the pine woods before it reaches the water.

Q. Then the further you go north from the spring, the further you take that line north; the further off that line would be if actually surveyed, from the field notes?

A. Yes, sir; it would be fully five chains anyway before it would reach, if you come up five chains and thirty-five links south of the section line for it. The field notes giving 83.50 to the bank or the branch or the stream, and eighty-five chains to crossing it would indicate that it was south of the line rather than north to where we did strike it.

Q. Mr. Howard, will you please state whether or not any of the surveying party with which you went investigated west of the east line of section twenty-one and east of the same line between the north line of twenty-one, and the line you all determined to be the boundary line, for blazed trees indicating some other south boundary line?

A. The other parties did—all three of the others that were included in this party.

Q. Do you know whether any of the other parties investigated that question with reference to the west boundary line, west part of the south boundary line?

A. Mr. Morehead and Mr. L. J. Owens investigated it.

Q. Mr. Howard, did you all see any other stake or look for any other stake in the neighborhood where you found this stake which you determined to be the southwest corner post, did you find any other stake of any size, which could have been the southwest post of the grant, or did you find any stake at all except the section stakes you mentioned?

702 A. I only found these four stakes in that neighborhood; I did not find any others.

Q. So there were no stakes there, large or small?

A. I did not find any, large or small, other than those. My investigation, as I said before, was along the lines that we chained at this west corner.

Q. Mr. Howard, as a surveyor, would you state whether or not in your opinion you located according to field notes as well as any surveyor could locate, the boundary of the Teresa Rodriguez grant?

A. It was my judgment.

Q. From all of the circumstances?

A. Yes, sir.

(That's all.)

Re-Cross Examination.

Mr. Dewhurst:

Q. Your testimony in the re-direct was that the south line

of the grant, as located by you, was as well located as any surveyor could locate it from the field notes. Is that testimony given by you with the same belief you expressed in your cross-examination—that the plat and field notes were both office work?

A. No, sir; I did not express that, if I recollect myself right; I did not intend to. The plat was office work, I said; I did not say the field notes were.

Q. The plat was office work?

A. Yes, I got that impression from the plat itself.

Q. Don't the field notes correspond with the distance designated upon the plat?

A. The plat is made up from the field notes, supposed to correspond with the field notes.

Q. Then you assume that the field notes of this grant are the field notes of an actual survey on the ground, and that the plat of the public surveys abutting upon it is office
703 work, made after the survey of the Spanish grant on the ground.

A. That is my impression frequently.

Q. I don't care about frequently. I am talking about this township, this particular grant.

A. This particular grant, that is my impression in regard to that; I think there is evidence of it.

8:30 A. M., March 14, 1911.

Hearing resumed at the above hour at the same place; present the same counsel for the respective parties, thereupon, the following proceedings were had:

The defendant to further maintain the issues upon its part produced and caused to be sworn as a witness one W. A. MOREHEAD, who testified as follows:

Direct Examination.

Mr. Cooper:

Q. What is your name?

A. W. A. Morehead.

Q. What is your business, Mr. Morehead?

A. I am a surveyor, county surveyor.

Q. Do you occupy any official position as a surveyor?

A. County surveyor of Marion County.

Q. Florida?

A. Yes, sir.

Q. What experience have you had as a surveyor, Mr. Morehead?

A. Sixteen years.

Q. During that time have you had any experience surveying wild land according to government surveys?

A. Government lands and all kinds.

Q. Have you had any experience with reference to surveying Spanish grants, Mr. Morehead?

704 A. Yes, sir.

Q. What experience have you had?

A. Well, we have a number of them in Marion County. I have run out almost all of them.

Q. Mr. Morehead, will you please state whether or not you have ever made any survey of any of the lines of the Theresa Rodriguez grant, in Lake County, Florida?

A. I have.

Q. When was that survey made?

A. On February 28th and March 1st, 1911.

Q. Did anyone else participate in that survey with you?

A. Yes, sir.

Q. Who else?

A. Mr. Owens and Mr. Howard.

Q. Will you look at that paper, Mr. Morehead, and state whether or not you have ever seen that paper before?

A. I have.

Q. Will you state how you identify that paper as a paper you have seen before?

A. It is a duplicate of the notes we used.

Q. You used notes that were a duplicate of that paper?

A. Yes, sir.

Q. How do you know, Mr. Morehead, that they were a duplicate of that paper?

A. We checked it off ourselves.

Q. Compared them?

A. Yes, sir.

Q. You know that that is the paper that you compared it with?

A. Yes, sir.

Q. Mr. Morehead, that paper—tell particularly what that paper is that you compared it with, so that the stenographer can take it down:

705 Mr. Dewhurst:

To save time, just ask him if it is such and such a paper.

Q. Well, is not this paper, Mr. Morehead, filed in evidence by C. B. Robinson, as Special Master in this case, August 24th, 1909, as defendant's Exhibit No. 27, purporting to be a certified copy of B. E. McLin, commissioner of agriculture of the State of Florida, of the government field notes of the survey of the private claim of Teresa Rodriguez on Big Springs, section thirty-seven, township nineteen, south, range twenty-eight east, and section forty-one, township nineteen south, range twenty-nine east, surveyed by M. A. Williams in 1851—will you state whether or not that is the paper?

A. Yes, it is a duplicate of the same as we used.

Mr. Dewhurst:

To save time, Mr. Cooper, you can ask him if this duplicate he used was compared with this and found to be the same.

Mr. Cooper:

All right. Will you state, Mr. Morehead, if this paper is the paper which you compared with the document you have just described?

A. Yes, sir.

Q. What part of that paper did you compare with this document?

A. We went over all of it, compared all of it—no, just the description of the land.

Q. Did you find whether or not that description corresponded with the document you have described?

A. There were a few little errors in it.

Q. Were they material errors, or will you state what those errors were, if you can?

A. Well, there was just a little differences in the course and distance. Little differences in the description. It gives some of the witness trees in the wrong direction.

706 Q. Which ones?

A. There is one says the northeast corner; it ought to have been the northwest corner.

Q. Are there any others that you know of, if you recollect; you can examine both of these together if you wish.

A. We corrected this paper from that paper.

Q. That paper, then, corresponds, Mr. Morehead, substantially with the field notes which you have described, as I understand you?

A. Yes, sir.

Q. Will you state whether or not you used those notes in making the survey which you made?

A. Yes, sir.

Q. Will you state whether or not you used any other notes, Mr. Morehead?

A. We used these same notes and the field notes of section twenty-one.

Q. Will you examine this paper, Mr. Morehead, and see if that is the paper you used?

A. It is; yes, sir.

Q. You know that that is it?

A. Yes, sir.

Q. You know whether or not this is a correct copy of the field notes of section twenty-one?

A. It is a duplicate of the correct copy.

Q. What is that in handwriting on that copy, Mr. Morehead?

A. That is where we checked the witness trees.

Q. That is not a part of the field notes?

A. No, sir.

Q. What part is the field notes?

A. This other part there, is.

Q. Typewritten?

A. Yes, sir.

Q. Will you state whether or not those field notes correspond with the original field notes?

A. They do.

707 Q. Were there any corrections or changes made, if you know?

A. There were.

Q. Where are those?

A. There is the variation.

Q. That was stricken out in this copy?

A. Yes, sir. Also some of the bearing trees.

Q. Will you state, Mr. Morehead, whether this paper which I hand you, marked "re-filed this February 18th, 1911, as complainant's Exhibit ...., C. B. Robinson, Special Master, is the paper with which you compared the copy you have in your hand?

A. That is it.

Q. I see, Mr. Morehead, that on this paper, says "pine thirty-three degrees east forty," about the middle of the first page; will you state what that pencil note on the copy indicates?

A. Notes a change; says on this paper "south thirty-three degrees west."

Q. That is the accurate description to correspond with the field notes?

A. Yes, sir.

Q. Now, Mr. Morehead, state exactly what appears on that copy, what changes are stricken out besides that point you have just mentioned, so as to make the copy correspond with the orignal, beginning at the beginning?

A. The variation the first thing was stricken out on the copy.

Q. And the point you mentioned just now?

A. Next is witness, "south thirty-three west," south thirty-three east, it should be; and this other change.

Q. What is that; read it?

A. "To northwest corner of section twenty-two and thence."

Q. What part was stricken out, what words?

A. Section twenty-two.

Q. That was not on the original?

A. No, sir.

708 Q. Anything else?

A. Some corrections made in sixteen.

Q. Now, then, Mr. Morehead, are there any other changes to make the copy conform to the original that you know of?

A. That is all the changes.

Q. Then, with the exception of those changes and the pen and pencil notes on this paper, the paper is a substantial copy of the field notes?

A. Yes, sir.

Q. State whether, in your opinion, you could take either the original or the copy and obtain the same results in making the survey?

A. Yes, sir; they are both the same now.

Q. This copy, then, as you have described it, and the field notes in this copy of the patent, are the notes which you used in making this survey?

A. Yes, sir.

Q. Will you state, Mr. Morehead, whether or not you made or had any part in making a drawing of your survey?

A. Yes, sir; I assisted in making a map of it.

Q. Who did you assist?

A. Mr. Howard and Mr. Owens.

Q. When did you do that, do you recollect?

A. About March—

Q. I don't mean the exact date, but was it about the time of the survey?

A. The first week in March.

Q. How long after the survey?

A. The next day.

Q. Will you examine this map, Mr. Morehead, and state—it is marked "Filed in evidence this 13th day of March, 1911, as defendant's exhibit ....., Special Master, Raleigh C. Dowling, Notary Public", and signed by Alfred Howard, and state whether or not that is the drawing to which you refer?

A. Yes, sir; it is the drawing of our survey.

709 Q. Mr. Morehead, please state just what that party did, where you went, what you did, right from the beginning, in the order in which you made that survey?

A. We established the southeast corner of section twenty-one.

Q. Now, I want you to go right along and tell what you did, how you went about it.

A. Township nineteen, south range twenty-eight is the number. We chained the section line up to the spring, in order to see if it checked with the field notes. We then chained up seventy-four chains and sixty links where the field notes called for the grant line; we couldn't find the grant line at this point. We set a temporary stake and chained up to the northeast corner of section twenty-one, found the old post, section line marked plainly, going west from the post. We also found the old numbers marked on the section corners.

Q. Mr. Morehead, state how you knew you had found the southeast corner of section twenty-one?

A. We got on the section line just a little north of the southeast corner of section twenty-one, and traced the lines to the corner.

Q. Well, did you find anything at the corner?

A. Yes, sir.

Q. State what you found?

A. Found the old corner post with the number "27" marked on it pointing to the southeast, which would be that section twenty-seven marked on that side (indicating).

Q. Describe that post?

A. The post was an old post made of pine.

Q. Did you find any bearing trees, or anything to locate that post?

A. We did; we located it by the field notes.

Q. Mr. Morehead, when you speak of locating the northeast corner of section twenty-one, do you refer to the fractional corner or to the old corner?

A. The whole corner.

710 Q. Is that run within the Rodriguez grant?

A. Yes, sir.

Q. State what you found at that corner, if anything?

A. Well, we checked with the witnesses, and the course was all right, but the chaining was a little off, not making it check.

Q. Mr. Morehead, will you state when you refer to this corner, this northeast corner of section twenty-one, are you referring to the full section, or are you referring to the northeast corner where the section is now cut off by the grant line?

A. This corner I am not referring to is the northeast of twenty-one in the grant where the field notes called for it.

Q. Where the field notes of this twenty-one you have mentioned?

A. Yes, sir; a certain distance above the grant line.

Q. Did you find anything there to mark the corner at the northeast corner?

A. The old post was there, marked.

Q. Describe that post, please.

A. It is an ordinary pine post; old hole and post.

Q. You said that it was marked?

A. Yes, sir.

Q. How was it marked?

Mr. Dewhurst:
If Mr. Morehead said he made those notes at the time he made the survey, I presume he did; how is that, Mr. Morehead?

A. We made them at the time we made the survey.

Mr. Dewhurst:
I don't object to that.

A. We found the government marks on that post. The side was marked plain going west.

Q. Do you personally recollect, Mr. Morehead, whether you found marks on that post, or are you stating that because you made no note of it?

711 A. We just found the old post, and sometimes the marks are worn out—you can't read them; you can see the signs of them, but you can't tell what they are.

Q. Did you see any signs of that on this post?

A. Some little signs, but we couldn't tell what they were.

Q. Will you state what you did next, Mr. Morehead?

A. We dropped back south, to where the field notes called for the grant line.

Q. What did you do then?

A. I set up my compass and line it east and west and hunted for the grant line.

Q. Did you find the grant line there?

A. No, sir.

Q. Did you find any corner stake there?

A. No, sir.

Q. Or anything to indicate any boundary marks?

A. No, sir.

Q. What investigation there did you make at that point or around there, if any?

A. While I was running the compass and I lined up east and west and we all hunted for the line, part of us went east and part west a piece.

Q. Did you go east and west, do you recollect?

A. I went both ways with the compass to start them off. We first started east and we couldn't find anything and then we went west.

Q. How is the timber long there, Mr. Morehead?

A. The timber is good pine timber, a little thin.

Q. Has the timber been cut off there?

A. No, sir.

Q. Can you tell anything about whether it is new growth?

A. No, it is old growth, old timber. Some of the trees two and a half feet in diameter.

Q. Do you recollect about how far either side east and west you went in search of those marks?

A. I went a mile.

Q. You went the whole way?

A. Yes, sir.

712 Q. Now, when you say a mile, from what point to what point?

A. We were on the east boundary of twenty-one, a little south of the northeast corner, where the field notes call for the chaining to the grant line from the southeast corner of twenty-one to where they claim they put the grant line.

Q. How is that? I didn't understand?

A. The field notes call for seventy-four chains and sixty links from the southeast corner of section twenty-one to the grant line.

Q. Then, you say you went a mile; did you find any marks or blazes to indicate a line at that chaining?

A. No, sir; not on that chain.

Q. Well, now, state what you did after that, Mr. Morehead?

A. Myself and Mr. Owens sent Avery—we were tracing to try to find the grant line and before we got to the west line of section twenty-one, we found the grant line.

Q. What did you find?

A. The old blazes on the trees.

Q. You found old blazes on the trees?

A. Yes, sir; and we traced it to the southwest corner of the grant.

Q. Was it difficult to trace that line?

A. No, sir. It was marked plain and straight.

Q. Was there any other line between that line and the north line of section twenty-one that you saw?

A. No, sir; no line at all.

Q. When I speak of the north line of twenty-one, I mean the old line, the old north line, the full section?

A. Yes, sir; that is right.

Q. Mr. Morehead, will you state whether you found any marked line or blazed line between the Sulphur Spring on the east line of section twenty-one and the northeast corner of the old section twenty-one?

713 A. Yes, sir.

Q. You found a blazed line?

Q. Did you find any besides the one you have mentioned, that you have testified about; did you find any other blazed line?

A. No, sir.

Q. Is there any other blazed line there that you saw, or that you could find?

A. Between the grant line?

Q. Between the northeast corner of old twenty-one and the spring running east and west?

A. The grant line comes between the spring and the section line.

Q. I say, was there any other that you saw or that you found?

A. No, sir.

Q. Besides the one you have mentioned?

A. No, sir.

Q. Did you look for any other?

A. Yes, sir.

Q. You say that you finally arrived at the southwest corner of the grant by following that line; how did you know you had arrived there?

A. First, I found the old blazed line running east and west and traced it to the corner post.

Q. You found, then, a post?

A. Yes, sir.

Q. Describe that post.

A. It was a big pine post, marked with "X R" on it.

Q. How did the location of that post compare with the field notes?

A. The field notes called for a bearing tree north sixty degrees east sixty links, and the old stump hole we found was sixty feet from the corner.

Q. How was the course?

A. The course was all right, north sixty east.

Q Mr. Morehead, will you please state the quantity and

age and condition of the trees along the line of your search for this grant line which you have mentioned, and along the blazed line which you discovered?

714 A. The timber was good large timber all over the woods where we were searching for the grant line.

Q. How was the timber along the blazed line which you have mentioned?

A. It was all right, just the same, big, large timber.

Q. Can you state whether the timber covering the ground when you made your search which you have mentioned and covering this blazed line appeared to be new growth or not?

A. No, sir; it is old growth.

Q. Mr. Morehead, what experience have you had, if any, in judging the age and condition of standing timber?

A. Well, my business is surveying land lines every day: running section lines and grant lines.

Q. Does that business involve the judgment of such things?

A. Yes, sir.

Q. Do you consider yourself competent to judge whether timber is young or old timber?

A. Yes, sir.

Q. Have you had any experience, Mr. Morehead, in judging of the age of stakes or blazes—tree blazes?

A. I have.

Q. Give us some idea of what your experience has been, if you will?

A. Well, just there where we were searching for the grant line near the spring, there were a great many blazes that had been made inside of fifteen years; the blazes of the government lines showed to be old, been burned over; the fire will get in them and burn out the rosin every few years—make them appear old.

Q. Well, now, Mr. Morehead, what experience have you had before, if any, to judge of those things; that is what I am trying to get at.

A. Well, I have had sixteen years' experience.

715 Q. In judging of the age of marks and blazes on trees?

A. Yes, sir.

Q. Mr. Morehead, have you ever done any work of surveying for timbermen?

A. Yes, sir.

Q. Does that work involve the judgment of the age of trees or marks or matters of that kind?

A. Yes, sir; it does.

Q. How much of that kind of work have you done?

A. Well, a good deal of it.

Q. Con you state roughly about how much of your work has been in that kind of work, how much of your time has been given to that line of surveying?

A. No, sir; I can not. Sometimes I will have to run out may be two or three thousand acres.

Q. Mr. Morehead, will you state what, in your opinion, if you can state, what was the age of the blazes on that line that you found leading to the southwest corner of the grant as you have mentioned; what the age was, and also of the corner post which you stated that you found there?

A. Well, the corner post appeared like it was about as old as the oldest blazes, and the blazes appeared to have been made about sixty years.

Q. Mr. Morehead, please state now, what you did after you found and located the southwest corner which you have mentioned?

A. After we located the southwest corner of the grant, we chained north to the north line of section twenty, to see how it corresponded with the measurements in the field notes.

Q. You found section twenty the south line?

A. Yes, sir; we found that.

716 Q. How did you know you had found that line?

Mr. Dewhurst:

Q. You said the south line?

A. It is the north line of twenty.

Q. How did you know you had found that line?

A. We found the old marks going east and west.

Q. What were those marks; what did they consist of?

A. Hacks and blazes.

Q. Mr. Morehead, is there any distinction between hacks and blazes, in their meaning?

A. Some of the government surveyors hacked the line and some blazed it.

Q. Well, go ahead; what did you do then?

A. We then chained on the section line on the north line of twenty, to the northwest corner of section twenty-one where the field notes called for it.

Q. Did you find anything there?

A. We found the northwest corner of section twenty-one.

Q. How did you know that was the corner?

A. We proved it by the field notes.

Q. Proved what?

A. We proved the northwest corner of twenty-one by the field notes that is in the grant.

Q. Was there anything to mark the corner; how did you find the corner?

A. Yes, the old post is there, marked.

Q. How was the old post marked?

A. 16, 17 and 21, the figures we could read quite plain. The other figures we could not tell, it belonged to be 20.

Q. Was there anything about that post—

Mr. Dewhurst:

Wait a minute. What post are you describing, what corner?

717 A. Northwest corner of section twenty-one up in the grant, where the government put it up in the grant. The field notes called for these posts being three chains and sixty links apart.

Q. When you refer to this corner, do you mean the full section?

A. Yes, sir; the full section.

Q. In the grant?

A. Yes, sir; in the grant. We found four chains and twenty-two links between these two corners.

Q. Between the corner you last mentioned and which other corner?

A. Between the northwest corner of twenty-one and the corner that was on the section line, on the grant line.

Q. Where the west grant line crosses—where the grant line crosses the north line of section twenty?

A. Yes, sir; the west grant line.

Q. Mr. Morehead, will you state whether the post of the intersection of the north line of twenty and the west boundary line had any marks on it if you recollect?

A. No, sir; that post was not marked.

Q. Then what did you do, Mr. Morehead?

A. We chained between the southwest corner of the grant —we chained—we chained it both ways; we first chained it up north; I did not mention that awhile ago.

Q. To the intersection of the north line of twenty?

A. Yes, sir; nine chains and fifty-seven links. After we checked up these two corners we re-chained it back south to the southwest corner of the grant—made the chaining the same.

Q. Then what did you do, if anything?

A. We chained then east.

Q. Where did you go east?

A. We chained east to the grass pond; the field notes call for a grass pond on the grant line fifty-one chains east of the southwest corner.

718 Q. Mr. Morehead, did you find that pond according to the field notes?

A. We checked up fifty-one chains and ninety links to the pond.

Q. Are those three corner posts which you mentioned in the neighborhood of the southwest corner of the grant the only posts or stakes which you found in the neighborhood?

A. We found four.

Q. What was the fourth one?

A. The fourth post was a little stake—it was a little short of 3.80 chains—I have forgotten now—east of the southwest corner of the grant, with no marks on it, but we could not check that post by the field notes.

Q. Can you tell anything about the age of that post?

A. No, sir; it did not appear to be a very old post.

Q. Mr. Morehead, could you tell anything about the age of the other three posts at that corner?

A. The post at the southwest corner of the grant appeared to be the oldest post of all.

Q. Well, could you give any idea or approximately any idea of of what the age of that post was?

A. Well, I would take it to be the same age of the grant line.

Q. How about the post at the northwest corner of twenty-one the old corner?

A. That was an old post.

Q. Can you give any idea of the age of that post, can you form any idea of the age of that?

A. No, sir; it was a very old post; we could read three numbers on it; the fourth one we could not read it.

Q. Mr. Morehead, was there anything about any of these posts or stakes that you have testified about, that would give you any idea whether they were government posts or not? According to government surveys, could you tell anything about that, from the appearance of the post?

719 A. The southwest corner of the grant, I take that to be put in by the government, marked "XR".

Q. Can you state anything about the others, the northeast corner of section twenty-one?

A. That northwest, that was a very old post.

Q. Can you tell anything about whether that was a government post or not?

A. I would take it to be, sir.

Mr. Jones:

Q. Which was that?

A. The northwest of twenty-one.

Mr. Cooper:

Q. About the two section posts, Mr. Morehead, at the northeast and southeast corner of section twenty-one, the full section?

A. They were old government posts.

Q. Now, then, you stated that you had arrived at the grass pond, please state what you did from that on?

A. We chained there in order to find out how the chaining checked with the field notes.

Q. What did you find?

A. At 51.90, we checked up to the pond—the field notes called for it being fifty-one chains.

Q. Mr. Morehead, with reference to that pond, suppose the blazed line which you had described had been further north to correspond with the government chaining from the north line of section twenty-one, the old line to the grant line, would the blazed line then have more nearly corresponded with the field notes with reference to that pond?

A. No, sir.

Q. Well, explain that, please.

A. If the grant line was south and north, as the field notes call for it, it would have missed the pond.

Q. Well, Mr. Morehead, how far would it have missed it? Do you know?

720 A. No, sir; very close.

Q. Well, if it had touched it at all further north, would the chaining have been more correct or incorrect from the southwest corner of the grant?

A. The chaining is more correct where he had chained it on the grant line.

Q. And the pond goes off toward the east?

A. It bears northeast, northeast course.

Q. Now, then, go ahead from that point.

A. Well, from that point we did not chain any more.

Q. You did not chain from there?

A. No, sir.

Q. Did you discover the blazes beyond the point or not?

A. We did.

Q. Did you make any effort, Mr. Morehead, to see whether that line was the correct line?

A. Yes, sir.

Q. What did you do with reference to that?

A. We run the line correctly from the southwest corner.

Q. To the east section line of twenty-one?

A. Yes, sir.

Q. State how you found that line with reference to where it touched the east line of twenty-one, with reference to the field notes; how closely did they correspond, if at all?

A. We did not chain that line.

Q. Well, what I am talking about, is where the blazed line crosses the east line of twenty-one, did you locate it with reference to the field notes, or could you locate it with reference to the field notes?

A. No, sir; we could not locate it as to the field notes.

Q. Well, state what you did, whether you located it there at all, how that line compared with the field notes at that point?

A. On the east line of twenty-one?

A. [Q.] Yes.

721 A. Well, the grant line is three chains and fifteen links south of what the field notes call for it.

Q. Well, according to the distances, then, it does conform to the field notes?

A. No, sir.

Q. Did you discover any natural objects in that neighborhood mentioned by the field notes?

A. The spring; he said he located the corner just on the north side of White Sulphur Springs.

Q. Mr. Morehead, will you state whether you found on the east line of section twenty-one any sulphur spring indicated by the field notes?

A. Yes, sir.

Q. Will you state whether or not, or will you state with reference to that spring, how this blazed line crossed the east line of section twenty-one?

A. The blazed line east and west?

Q. Yes, sir.

A. It crosses it just north of the spring.

Q. How far north, do you recollect; you can refer to the field notes if those are the notes you used?

A. This says in edge of branch of White Sulphur Springs.

A. [Q.] Did you find any branch there at that point?

Mr. Dewhurst:

Wait a minute; you are examining him as to the south line —blazed line—of the grant; he is reading from the field notes.

Mr. Cooper:

I am examining him as to where the blazed line crossed twenty-one.

Mr. Dewhurst:

Why don't you just ask him where this east and west line, blazed line, which you claim to be the south line of the grant, crosses the east line of this section twenty-one of this spring?

722 Mr. Cooper:

That is what I am getting at.

Q. Does that line touch the spring anywhere?

A. It does, a little east of there.

A. [Q.] Well, that is what I want you to explain fully; just how these two lines crossed with reference to the spring?

A. We did not chain that point in about something like two chains east, it would strike the spring run.

Q. The line would strike the spring run?

A. Yes, sir; on the blazed line, may be a little further.

Q. Did that blazed line, in crossing the east line of twenty-one, touch the branch mentioned in these notes—the spring branch?

A. The grant line?

Q. Yes, sir.

A. Yes, sir; it does.

Q. How does it touch there—at the intersection there, I mean?

A. It intersected in twenty-two.

Q. Then, how do you know, Mr. Morehead, that that was the grant line?

A. We had traced it—

Q. Don't the field notes call for an intersection of those two lines at the branch, at the edge of the branch of the spring?

A. Yes, sir.

Q. Well that is what I am getting at; did it do it?

A. It crosses just on the north side of the spring.

Q. It did not touch the spring?

A. No, sir; not right at the spring.

Q. It did not touch the line at that point.

A. No, sir.

Q. Will you describe the ground at the intersection of those two lines?

A. It was on a hill.

Q. What kind of a hill?

A. The hill was sloping to the east.

Q. What was the foot of that hill—what is at the foot, if anything?

723 A. Just big pine timber and long the spring run is young growth.

Q. Well, then, this sloping of the spring is not down to the branch?

A. Yes, sir.

Mr. Jones:

Counsel objects to the line of examination as being entirely leading.

Q. Will you state, Mr. Morehead, how far it is if you can state, from the intersection of the blazed line of the east line

of twenty-one on the edge of that bank you have mentioned, to the spring run along that line?

A. East to the spring run?

Q. Yes, sir.

Mr. Dewhurst:

Q. From the east line of section twenty-one.

A. About two chains.

Mr. Cooper:

Q. Mr. Morehead, if that blazed line ran further north, would the distance along the blazed line if run further north, if the blazed line ran further north than it is where you find it located, would the distance along that line to that line from the east line of section twenty-one be greater or less—you get my meaning?

A. No, sir.

Q. What direction does that spring run?

A. Northeast.

Q. Well, then, if the blazed line was further north than where you found it located, would the chaining be greater or less along that line to the run?

A. It would be greater.

Q. Now, Mr. Morehead, I want you to state whether you made any investigation or not east of the east line of section twenty-one for that blazed line?

A. I did.

Q. Will you state how far, and what you found, if anything?

A. About five chains east of the west line of twenty-two, I found the old blazed line.

724 Q. How did those blazes seem to compare with the blazes you found west?

A. They were in line.

Q. Well, what was their appearance?

A. They were old blazes.

Q. How did the appearance of those blazes compare with the other blazed line—the blazed line on the east line of twenty-one?

A. They appeared to be as old as any of them.

Q. Were they the same kind of blazes or not?

A. They were, yes, sir.

Q. You say you followed that line about five chains?

A. About five chains east of the section line.

Q. Did you go any further east than that?

A. No, sir.

Q. Did you ascertain whether that continuation was exactly in line with the other line or not?

A. It was.

Q. Mr. Morehead, when you located the four stakes which you have mentioned, being the southwest corner of the grant and the northwest corner of twenty-one, and the other two stakes you have mentioned at the intersection there of the section lines, of the west grant line, did you make any investigation along those lines to ascertain whether there were any other stakes there or any other blazed lines which might have been south of the grant?

A. I did.

Q. State what you did with reference to that?

A. Myself and Mr. Avery Owens were together hunting for the line. We lined up east and west course, searching for that line.

Q. Where did you line up?

A. Near the northwest corner of twenty-one.

Q. Did you examine the timber for marks in that neighborhood?

A. Yes, sir.

Q. Did you find any marks or any stakes?

A. We did not.

725 Q. How much investigation did you make there?

A. Well, we searched for some time.

Q. Are you prepared to state, Mr. Morehead, from your investigation that there is no other blazed line or any other stakes in that neighborhood or between the south boundary line of the grant, between the post "X R" and the northwest corner of twenty-one or in that neighborhood?

A. There is no other lines or any posts.

Q. Did you go any further east in your examination?

A. We did go west from the spring—we went west.

Q. What examination did you make in there, going west along there?

A. We examined the whole mile.

Q. How far north or south did you go?

A. I had my compass lined about where the field notes called for the grant line.

Q. Did you make any search north or south of that point, or merely in a straight line?

A. We made a search north and south.

Q. Can you give any idea how far you went north and south?

A. Well, the distance of about two or three chains each way from the post.

Q. You found no other blazed line?

A. No, sir.

Q. You said you located the west line of the grant?

A. Yes, sir.

Q. Did you see any blazes on that line?

A. Yes, sir.

Q. What kind of blazes were those?

A. Old blazes.

Q. How did those blazes appear in character and age—how did they compare with the south boundary blazes you mentioned?

A. They appeared to be the same.

Q. Are you prepared to state, Mr. Morehead, that there is no other blazed line or blazed lines between the north line of twenty-one and the blazed line you have mentioned?

726 A. There is not.

Q. Mr. Morehead, did you see any house or cabin anywhere along or near the blazed line, which you have mentioned as the south boundary line of the grant?

A. Yes, sir.

Q. State where it was and what it was?

A. It was a small house sixty-three feet north of the grant line and about fifteen chains west of the spring.

Q. What was that house built of—the shanty—what was it?

A. It was built of sort of rough lumber, rough-sawed lumber, small house.

Q. Did you see any other house in the course of your examination—or cabin?

A. I did not.

Q. Mr. Morehead, in running these different lines which you have mentioned, as a surveyor, would you state that these lines were properly run?

A. Yes, sir.

Q. Correctly?

A. Yes, sir; they are run correctly.

Q. Mr. Morehead, will you state whether or not the blazed line which you have described, which you located as the south line of the grant, was or was not a well defined line, or whether it was difficult to find, the entire distance where you ran it from the southwest corner of the grant to the point where you went?

A. It was well marked and run straight.

Q. Was it difficult to find?

A. Very easy to find all the way through.

Q. Well, can you state whether or not those blazes along that line which you described appeared to be the blazes of the survey run, or were they irregular and incorrect?

727 A. On the east half of section twenty-one there was a good many new blazes; the line had been re-run, say ten or twelve years ago.

Q. Can you state whether the old blazes were surveyed or not—whether those blazes marked the surveyed line?

A. Yes, the blazes marked the surveyed line.

Q. How could you tell that?

A. Because they appeared to be old blazes.

Q. Could that line have been run there without surveying it as you found it run—was that a surveyor's line?

A. Yes, sir; that was a surveyed line.

(That's all.)

Cross-Examination.

Mr. Dewhurst:

Q. About how many Spanish grants have you ever surveys, [surveyed] Mr. Morehead?

A. Well, sir, I couldn't tell you how many; I have run very few of them in Marion County, most of them in Marion County.

Q. Five or six?

A. I couldn't say how many.

Q. Give me as near as you can the number of Spanish grants that you have surveyed?

A. Well, they have a county map here; I can show you from the map.

Q. No, from your recollection.

A. Well, I guess I have run the biggest portion of them in Marion County; as many as six, I guess.

Q. What was the character of the marking post found on those Spanish grants, relative marking post which you found at the corners of the land surveyed as public lands?

A. The grant posts is generally marked in a different way; they have some letters on them, and the section corner, the post will be turned sort of cati-corner and the number put on each corner for the section.

728 Q. Is it not a fact in the field you find the post which marks a Spanish grant to have marks on them, or letters on the side toward the grant, and numbers on the side toward the public surveys, where the public surveys abut against the, do you not?

A. Yes, sir.

Q. What is the size of the posts that are used to mark the public surveys, compared with those used to mark corners of the Spanish grant, is there any difference in their size?

A. The corners of the grant and the section corners are about the same.

Q. About the same size?

A. Yes, sir.

Q. What is the general character of the wood used in marking corner posts?

A. Mostly pine.

Q. Is not lightwood usually used, light wood posts?

A. Pine, that is light wood.

Q. Well, it turns to lightwood in time does it not?

A. Yes, sir.

Q. How deep are the marks in the post? How deep are the marks in the posts when they are put there first, would you say?

Mr. Cooper:

We object to this line of examination, as it is not in cross.

Q. Describe the character of the numbering which you found upon the corner post marking the corners of the public surveys?

A. The marking is done with a cutter, cut into the post about a quarter of an inch deep, about the way they are marked.

Q. Now, the post that had this marking obliterated, would be about how old would you say?

A. That post would have to be—well, it would have to have been put in by the government and to have been of inferior timber so you couldn't read the number.

729 Q. My question is about what age would be required for the weather to obliterate in a pine post the usual government numbers and markings?

A. That would be owing to the kind of timber used, the kind of timber the post was made of.

Q. Very well, give me your answer of different kinds of timber.

A. Well, you take a rich pine post, a rich pine knot, it will last a good many years.

Q. Please state the number of years you think it would take to obliterate markings?

A. Well, I have seen them where the grant corners where they had been marked sixty odd years ago and could read the numbers on them.

Q. Well, how far from the post could you read the number?

A. I would have to get right at it.

Q. If the post had stayed for sixty years, then the obliteration by the weather would be such that you would have to get close to the post in order to observe the markings?

A. Yes, sir. Sometimes the mark will grow over with moss, just the remains of it.

Q. That moss growing on them would protect them, would it not?

A. Yes, sir.

Q. Did you find any of these posts on this survey had been grown over with moss?

A. No, sir.

Q. Then, all of these posts on this survey were exposed to the obliteration by the weather, without any moss protection?

A. No, sir; not any moss on them.

Q. You stated that you found the marking upon the corner post at the northeast corner of the full section twenty-one to be obliterated?

A. We could not read the numbers on it.

Q. Was there any evidence that it had been numbered?

A. Yes, sir.

730 Q. Then you feel satisfied that you located the corner post of the northeast corner of section twenty-one which had been placed there by the United States surveyors more than sixty years ago?

A. Yes, sir.

Q. And that that post then in the grant was the same identical post which had been placed there by the United States surveyors?

A. Yes, sir.

Q. Now, state whether you have clear confidence in your location of the corner post at the northwest corner of the full section twenty-one?

A. Yes, sir.

Q. And that is confirmed by the fact that that post did show the numbers 21, 20, 17 and 16?

A. 16, 17 and 21, you could read those numbers.

Q. How clearly did those numbers appear on the post?

A. We had to get right up close to it.

Q. You say you found the post which you thought marks the southwest corner of the grant?

A. Yes, sir.

Q. And that that had marked on it "S R"?

A. "X R".

Q. What did "X R" indicate?

A. That is that the field notes called for the corner being marked "X R".

Q. How clearly was it marked on that post?

A. That showed pretty well.

Q. How far from the post could you see it?

A. I had to get up close to it.

Q. How far were you from the post before you observed that as a corner post?

A. I was off some distance; the post stands up over three feet, about three and a half feet high in a clean

731 place.

Q. How far were you from that when you first recognized it as a marking post?

A. Well, I didn't recognize until I got right up to it.

Q. Is it not a fact that Mr. Owens pointed it out to you as a corner post before you got to it?

A. No, sir.

Q. How far were you from the post when you saw the markings upon it?

A. I had to get right up to it. I could see the post, but I could not see the marks.

Q. How far from the post did your eye detect the markings on it?

A. I had to get right up close to it. Right up to it before I could tell the marks.

Q. Well, if you did get up to it—if you had moved away—how far could you have moved away from it and still detect the markings?

A. I could have stood off three or four steps then.

A. [Q.] And detected it?

A. Yes, sir; "X R", see it pretty plain.

Q. You are very sure that there are no other lines running east and west between the Sulphur Springs and the northeast corner of section twenty-one?

A. There is no other line.

Q. Marked on the ground?

A. No, sir.

Q. How did the blazes appear on the south line which you adopted as the south line of the grant as surveyed upon the ground, compare with the blazes on the west line of the grant?

A. They appeared to be the same.

Q. They appeared to be the same age?

A. Yes, sir.

Q. Did all the blazes on the south line of the grant, except the blazes in the northeast quarter of section twenty-

732 one which you have stated were made only about fifteen years ago, appear to be of the same age with all the blazes which you found on the west line of the grant?

A. They did, all except the new blazes.

Q. And where did you say those new blazes were located?

A. They were all along the grant line running east and west, the line had been re-run by someone looked like about ten or twelve years ago.

Q. How do you account for the fact that you found the lines as run on the ground, and the lines surveyed as public lands were marked with the blaze and two chops, while the lines which you adopted as the lines of the grant were only blazed?

A. Well, some government lines are blazed and hacked.

Q. Is there any discrimination between the land surveyed as public surveys and land surveyed as Spanish grants in the matter of whether they are blazed or blazed and hacked?

A. No, sir; the lines always appear to be marked about the same way. Different surveyors would mark the line some by blazes and some hacks.

Q. Do you not generally find in re-tracing the surveys of the government lines that they are marked by hacks in the blazes?

A. They generally blaze when they are re-run.

Q. Generally blaze when they are re-run.

A. Yes, sir.

Q. But the original survey made by the United States surveyors is it or is it not usually marked by a blaze with one or more hacks in it?

A. No, sir; sometimes it is two hacks on a tree, or if they blaze it they put two blazes.

Q. The section numbers of land surveyed as public surveys run to what number?

A. From one to thirty-six usually where they are run even.

733 Q. That thirty-six sections completes the township?

A. Yes, sir.

Q. Is it not a fact that all Spanish grants are numbered from thirty-seven up?

A. I couldn't tell you that.

Q. How long, you say, you have been a surveyor in Florida?

A. Sixteen years.

Q. And you don't know that the Spanish grants begin to be numbered from thirty-seven up?

A. I know they are numbered, but I don't keep up with the numbers.

Q. You say you found out on the southwest corner—what you call the southwest corner of the Rodriguez grant—a stump hole in place of a witness tree?

A. Yes, sir.

Q. How many trees were there in that vicinity—within a radius of two hundred feet circling around that stump?

A. I couldn't say, south of the line the timber is cut off; at the corner of the grant the timber is thin.

Q. About how many trees could you find, or stumps of trees, within a radius of two hundred feet of that corner post as you located it?

A. Well, I couldn't tell you.

Q. How do you account for the fact that the field notes give but one witness tree at the southwest corner of the Rodriguez grant?

A. By the carelessness of the surveyors.

Q. How many trees did you find standing in the immediate neighborhood of that corner post, which you located at the southwest corner of the grant?

A. There is timber on the north and northeast of the grant corner, southwest corner, it was very thin right there at the corner.

734 Q. How many stump holes did you find in the immediate neighborhood of that corner?

A. There is no other stump in seventy-five or eighty feet of that, I suppose.

Q. Well, beyond the seventy-five or eighty feet, how many stumps did you find in the immediate neighborhood?

A. Well, I can't answer that.

Q. Did you go there at all?

A. Yes, sir.

Q. But made no observations of the stumps or standing trees in the vicinity of the corner?

A. No, we were first hunting for the witnesses which proved to be the witnesses for the corner.

Mr. Jones:

Q. How many standing trees were there in the immediate vicinity of the hole in the ground you testified about?

A. There is some further to the northeast.

Q. How much further?

A. Well, it is some distance.

Q. No other standing trees, as I understand it, right immediately around that stump, within a radius of twenty feet?

A. No, sir.

Q. Well, say forty feet of the stump hole, were there any standing in that radius around that stump hole?

A. There might have been some fifty feet. I can't say exactly.

Mr. Dewhurst:

Q. Then, your opinion as an expert surveyor is that it was due to the carelessness that no more witness trees are mentioned in the field notes as to locating the southwest corner of the grant?

A. They generally put from two to four to the corners.

Q. Why, in this case, was there a failure to put that number of witness trees in which to locate the corner of this grant, in your opinion?

735 A. I would say it was just carelessness in the surveyor. Sometimes they only put one for a section corner.

Q. In tracing the west line of the grant, the field notes note the distance at which this west line crosses the full section-eight and seventeen, and at a distance of 162.65 chains note it crosses the north line of section twenty, and notes also that there was no description of a corner at this point in the field notes, how do you account for the fact that the field notes omit to describe any witness trees or any description of a corner where the west line of the grant crosses the north line of section twenty?

A. Well, it gives the corner in the grant, tell how far the lines were apart; it says three chains and eighty links from this corner here in the grant. The government notes, field notes, says it is three chains and eighty links from the northwest corner of section twenty-one to the grant line.

Q. Are you not in error in your answer that the field notes—that the distance is three chains and eighty links from the northwest corner of section twenty-one to the grant line—do the field notes anywhere say that the grant line is 3.80 chains from the northwest corner of section twenty-one?

A. Yes, sir.

Q. You fail to comprehend the question, which is: the field notes give the distance from the northwest corner of the Rodriguez grant to the point where the west line crosses the north line of section twenty, and also in the field notes it is notes "No description of a corner at this point in the field notes"; please explain that "No description of a corner at this point".

A. No, there is no witness to that corner.

Q. Why did the field notes contain this note that "no description was given of the corner in your opinion?

736 A. I can't say.

Q. Is it, or is it not unusual to omit a description of a corner intersected by the line of another survey?

A. They should have given the witnesses.

Q. Should have given the witness trees?

A. Yes, sir; for that corner.

Q. In running the south line of the grant, the field notes mention that it crosses the west line of section twenty-two at a distance eighty-three and a half chains east of the southwest corner of the grant, and also says "No corner at this point described in the field notes," is the omission to describe the corner in the field notes on the south line in your opinion due to the same grounds that the omission to describe the corner on the west line?

A. Yes, sir; that does give the measurement where they cross the line.

Q. What should they have given?

A. They should have given two witness trees.

Q. Why do you say two witness trees?

A. Well, at the intersection corner they give four, but they had given the measurement on the east line going north, stating where they crossed the grant line.

Q. Where had they given such description?

A. Well, they are obliged to tell where they struck the grant line at.

Q. By obliged to tell it, do you find it in the field notes of section twenty-one?

A. Yes, sir.

Q. Please point out in the field notes of section twenty-one any note of where it crosses the grant line?

A. Yes, sir; on the map. I suppose it does in the map.

Q. Then you are mistaken in stating that the
737 field notes of the survey of section twenty-one make any mention of where that east line crosses the grant line, are you not?

A. No, sir; this calls for the Sulphur Spring.

Q. You say no, sir; you say yes; what is your answer, you are mistaken?

A. Yes, sir.

Q. And when you said that—how far from the south line of section twenty-one did you find the Sulphur Spring?

A. Seventy chains and twelve links.

Q. How much did your measurement differ from the distance given in the field notes?

A. One chain and twelve links.

Q. Upon the plat of the Theresa Rodriguez grant as certified as a copy of the survey of the surveyor general of Florida and filed in evidence in this case, appears a line running northeasterly from the Sulphur Spring, depicted as a black line and to the west of that appears another black line apparently starting from about the north line of section twenty-one, what do those black lines indicate?

A. The spring run; this one here is the spring run (indicating).

Q. What does the westerly line as depicted on the plat indicate?

A. That is the edge of the swamp on the north.

Q. South line as depicted upon this plat which you say is intended to indicate the spring run correctly depicted on the plat as you actually found it on the ground?

A. Yes, sir; it is very close.

Q. The bearing of that line as depicted upon the plat is approximately what course by the compass?

A. About north forty-five east.

Q. And how far northerly does it continue that course.

A. Only a short distance; I can't say how far.

738 Q. How far did you observe it?

A. About five chains, I suppose.

Q. And did it still continue on the course of about north thirty-five degrees east for that five chains which you observed it?

A. I didn't notice.

Q. Did you notice any change in its course in that five chains which you observed?

A. No, sir; I did not make any note of it.

Q. Please look at the plat drawn by Alfred Howard, that portion of it which he has marked as spring run, north of the line which is indicated upon that plat as the south line of the Rodriguez grant, and state whether or not the lines marked on that plat as spring run correspond with the general course of the spring run as depicted upon the United States plat of the Rodriguez grant?

A. This drawing on the map is as near correct as we could get it.

Q. Please answer my question, does that correspond with that (indicating) as to the course of the run?

A. It does not.

Q. What was your purpose in going on the ground to make the survey you made?

A. Surveying this grant?

Q. Yes, sir.

A. To establish the grant line.

Q. Which grant line?

A. The Teresa Rodriguez.

Q. Was it to establish all the lines of the grant?

A. No, sir.

Q. What line was it to establish?

A. The south line.

Q. Who came to obtain your services?

A. The Wilson Cypress Company sent for me.

Q. Why did you go?

A. Sir?

Q. When they sent for you, where did you go?

A. I came here.

Q. Who did you meet here?

739 A. I met Mr. Wilson, Mr. Owens, Mr. Howard and Mr. Owens' son.

Q. What was the—describe the interview between Mr. Wilson, Mr. Howard, Mr. Owens and yourself as to what was said to you, and what you were asked to do?

A. Mr. Cooper, this Mr. Cooper (indicating)—we met him here the same day.

Q. Well, what were you asked to do?

A. We were asked to go and survey that grant line.

Q. Were you asked to determine the location of this cabin?

A. Yes, sir.

Q. Was any statement made to you as to the importance of showing the location of that cabin north of the south line of the Theresa Rodriguez grant?

A. There was some words about it; some of them claimed that the cabin was not on the grant.

Q. Was the testimony that had been given by Mr. Frieze and Mr. Richardson and Mr. Beasley, surveyors, that the cabin was not on the grant, disclosed to you?

A. Yes, sir; they appeared to make it that the cabin was in the section twenty-one.

Q. Then you knew before you started out that these three surveyors had placed the cabin upon the lands surveyed as the public lands in section twenty-one, and that is where they claimed it, that they had placed it there?

A. Yes, sir.

Q. You knew that before you started out?

A. Yes, sir.

Q. Were you advised that the success of this case depended upon your locating this cabin out of the land surveyed as section twenty-one and on the land surveyed as the Rodriguez grant?

740 A. Nothing said about that.

Q. Didn't have anything to say about it?

A. No, sir.

Q. What did Mr. Owens at that interview tell you in regard to the location of the grant line and his knowledge of it?

A. Why, he said he knew where the grant line was.

Q. And did he say that he knew that the cabin was north of the grant line?

Q. Why, he supposed that it was.

Q. And is it not a fact, Mr. Morehead, that Mr. Owens or his son took you to the stake which you accepted as the southwest corner of the grant?

A. He did not.

Q. Didn't he tell you where to go to find it?

A. Yes, sir; he told me he had been to the corner; that is old Mr. Owens, he was behind us.

Q. What variation of the needle did you use when you began your survey?

A. I commenced on about fifty-five minutes, on the east line of section twenty-one.

Q. What variation did you find corresponded to the courses as given in the field notes as indicated by blazes which you found on the trees?

A. The variation I proved was the one, one degree and fifty-five minutes.

Q. And then starting with a variation of fifty-eight minutes—

A. Fifty-five.

Q. Fifty-five minutes, starting with a variation of fifty-five

minutes, you changed your variation after you had run along a blazed line, and adopted the variation which the blazed line made, conforming to the courses given in the field notes?

A. Yes, sir; I was running a little east of the blazed line half a mile.

Q. And then you did adopt the field notes and
741 make your variation conform to the course indicated by the field notes and by the blazes?

A. I corrected my compass, my variation at the half mile post and then ran north again.

Q. Then you used the field notes for the proper courses and you used the blazes for a proper course and made your variation conform to those two?

A. To the blazed line.

Q. To make the blazed line correspond with the field notes?

A. Yes, sir.

Q. Now, also, in adopting the line which you did adopt for the south line of the Rodriguez grant, what was there which made you adopt that as the true line of the grant?

A. By finding the southwest corner of the grant and running east.

Q. But the purpose of your going there was to find the southwest corner of the grant, was it not?

A. Yes, sir.

Q. Ant you went there to find what was the true southwest corner of the grant?

A. Yes, sir.

Q. You accepted a stake marked "X R" stake in the ground as evidence that that was the southwest corner of the grant—that that was all that you found?

A. No, sir; the old blazed line corresponding with the stake.

Q. With your sixteen years' experience of surveying, how near do you feel that you can come to determining the age of blazes on a tree that are more than twenty years old?

A. I can tell them very readily.

Q. Do you testify that you can estimate that blazes were put on trees twenty-five years ago as differing from blazes that were put there thirty years ago.

742 A. Well, ten years I could not tell much difference, not a great deal.

Q. Can you distinguish a blaze, to determine whether or

not they were placed on trees thirty years ago or forty years ago?

A. Well, I can just approximate it about.

Q. How near can you approximate as to whether or not blazes were placed on trees thirty years ago or forty years ago?

A. Well, I think I can come within five years of it.

Q. Now, how can you determine whether brazes were put on trees forty or fifty years ago?

A. Well, I don't have many of that kind to work with.

Q. Is it not a fact that it would be practically impossible to determine whether a blaze which marks a line were made thirty years ago or forty years ago?

A. You can't tell much difference in that age.

Q. As a county surveyor having made blazes since then, and the government has made blazes before that, is it not practically impossible and I might say absolutely impossible, to determine whether a blaze was made on trees fifty years or sixty years ago, and distinguish between them?

A. Well, I can't say.

Q. Can you distinguish between blazes which were made thirty years ago and blazes which were made sixty years ago?

A. I can.

Q. How do you distinguish?

A. I can tell about the depth in the tree; the old blazes have been burned over, when the tree is blazed the rosin will run out, and then when the woods catch fire these blazes will probably burn out and make them appear old, deep in the tree.

Q. Is it not a fact that a blaze that had been on a tree for thirty years has exactly the same characteristics as a blaze that has been on a tree forty years so far as the burning and running of the rosin?

743 A. No, sir; there would be some difference.

Q. What difference would there be?

A. Because the holes burned over more times would appear old.

Q. How much deeper would a blaze that had been on a tree forty years be burned than a blaze that had been on a tree thirty years?

A. Well, I couldn't say that.

Q. If you can't say, how can you distinguish between blazes forty years old and thirty years old.

A. I don't have many of that age to figure with; it is the old government blazes made sixty-two and sixty-seven years ago, and then the county work which has been done in the last from twenty to thirty years ago.

Q. Then all your experience has been in distinguishing between blazes that were put on sixty years ago and blazes that were put on twenty years ago?

A. Blazes put on since that time, yes, sir.

Q. Answer the question, please; whether your experience has been confined to distinguishing between blazes put on sixty years ago and blazes put on twenty years ago?

Mr. Haskell:

Defendants object as attempt on the part of the complainant to put testimony in the mouth of the witness, when the witness has already testified clearly and distinctly and in response to the question.

Q. Now, I want you to answer the question—his objection is made—I want an answer to the question?

A. All right, sir: what is it?

Q. (Addressing the reporter) Read the question.

(Question read to the witness.)

A. It has.

Q. When you testified in your direct examination that the corner posts at the point you designated as the southwest corner of the Rodriguez grant looked as if it was the
744 same age as the blazes, will you explain on what you base that information?

A. Well, the post being marked "X R", on which appeared to be marked the old government stake, which I have found a good many of them at the grant corners in my surveys.

Q. That is the ground on which you base your opinion—that the stake was of equal age as the blazes?

A. Yes, sir.

Q. But is it not a fact that the stake was not blazed at the point where the field notes tell it would be found?

A. It was a little bit off, but it was in the blazed line, the

blazed line going south, going to the stake and then it run east from it.

Q. It is in testimony in this case that this grant was surveyed more than thirty years ago, is it not possible that that blaze, that these blazes were made on that post, was moved to the place it occupies thirty years ago?

A. No, sir.

Q. State the reason why it was not possible?

A. I think the blazes are older than thirty years.

Q. On what do you base that opinion?

A. Just by the depth in the trees.

Q. Suppose a man who blazed a tree had made deep blazes, and there had been fires burning the pitch from the blazes for thirty years, would it not have made a blaze appear as those blazes appear now?

A. Oh, yes, sir; it would make them appear old.

Q. Why did you, in your direct testimony, say that you thought that post at the corner, which you adopted as the southwest corner of the Rodriguez grant, was sixty years old?

A. Because it appeared to be old as the blazes were, and the field notes call for the "X R" mark on it.

Q. Why did you not—why did you happen to
745 name the exact number of years?

A. Well, the survey was made about sixty years ago.

Q. Was it not then that you wanted to make it conform to the time in which the plat says that the United States survey was made?

A. Yes, sir; it appears about that time.

Q. And you sought to make the age of the post such that it would conform to having been put there by the surveyor who made the survey in 1851?

A. Yes, sir.

Q. How much difference did you make in measuring that part of the south line of the Rodriguez grant which extended into section twenty over what the field notes call for, state in feet the difference?

A. Forty-two links difference.

Q. That is about twenty-five feet?

A. Twenty-eight feet.

Q. Then, what was the character of the ground over which you measured this twenty-eight feet excess?

A. It was very near level.

Q. What was the character of the ground on the east of the northwest quarter of the fractional section twenty-one—what is the character of that ground east of it?

A. It is low, runs low to the east.

Q. How far east does it run low?

A. About four or five chains.

Q. What is its character then?

A. Well, it is right close to that spring run.

Q. No, beyond that; what is the character of the ground to the eastward?

A. Well, then, it is up hill again.

Q. How far east did you run on the north line of fractional section twenty-two?

A. About five chains.

746 Q. Why didn't you run further east?

A. I found the marked line there and then it turned back west.

Q. I didn't catch that?

A. I found the line marked on the east side of the run.

Q. Yes, all right; why didn't you go on follow it on eastward?

A. Well, we didn't care to work any further there, we wanted to get the southwest corner of the grant.

Q. Is it not a fact that to have extended that line eastward would you have run into a swamp?

A. Yes, sir.

Q. Almost impassable?

A. Yes, sir; very thick.

Q. How far would that swamp extend, do you know?

A. I couldn't tell you.

Q. You couldn't tell. Well, why, then, if you wanted to locate the true line of the grant, did you confine your work entirely to the lines immediately adjacent to the southwest corner?

A. I was after finding the old marked line for the south line of the grant.

Q. Then anybody, whether a surveyor or not, could have done the same thing, if Mr. Owens had gone with him, and he had used his eyes to see the blazed line and the posts, could he not?

A. A surveyor could.

Q. What would prevent any man who was not a surveyor from locating that post which set in the grant on which had blazed lines running away from it to the east and run away from it to the north, if it had been pointed out to him by Mr. Owens?

A. Well, this part of the line has a great many blazes on it, the east half of the grant line, anyone could not have traced that line without a compass.

Q. Are those blazes off the line which you adopted?

A. They were close to the grant line, and they were marked irregular, looked like they were not marked by a surveyor, part of them.

Q. Then, there were other lines blazed besides the line which you which you ran along the northeast quarter
748 of section?

A. No, sir; it is not a line, it is just scattering blazes close to the grant line; they are new blazes, they don't appear to be more than ten or twelve years old.

Q. If you had wanted to verify the true location of the southwest corner of section of the south of the Rodriguez grant, would it not have been proper for you as a surveyor to have started at some other corner of the grant and surveyed the northwest corner of the grant, and extended the west line down in accordance with the field notes to have determined that location ?

A. No, sir.

Q. Why?

A. Because after we established the southeast corner and ran north of the spring I considered that a checking point to locate west.

Q. Then you were satisfied when you had located the Sulphur Spring upon the grant and its distance from the south line of section twenty-one, you had then performed all that was necesasry to locate the south line of the grant?

A. That gave us the point to work from.

Q. That gave you the point to work from?

A. To locate the grant line, because the notes state that it crossed line of twenty-one, the west line of twenty-one, close to the Sulphur Spring.

Mr. Cooper:

Q. The east line?

A. Yes, the east line of twenty-one, west line of twenty-two.

Mr. Dewhurst:

Q. Then, to get the true location of the south line of the Rodriguez grant, you adopted this spring as located upon the ground, and then you adopted the field notes on the survey of the grant, did you not?

A. We checked up the north of the spring as to where the map showed the grant line would strike.

749 Q. Because the field notes stated that the grant line would strike the spring run at a given point, you accepted that as the proper location on the ground of the south line of the grant?

A. That the grant line was just north of the spring.

Q. That you accepted as locating it on the ground?

A. Yes, sir; but we could not find any line there at that point when we got there.

Q. When you say you could not find any line there, you mean you could not find any blazes?

A. Any old line.

Q. Any blazed line, did you not?

A. No, old blazed line. There were new blazes.

Q. Why did you use your field notes to determine the proper place for the south line of the grant to cross the spring run, and rejected your field notes when they placed the line north of where you actually found the blazes?

A. Well, we took the spring for checking points, and then went north to where we supposed the grant line to be.

Q. But you have admitted that nowhere in the field notes of the survey of the grant, is the spring mentioned—

Mr. Cooper:

Well, if he made that admission, we submit that the field notes is the best evidence of that.

Q. That is true enough and the field notes bear you out in your admission.

A. The spring is mentioned in the notes, all right.

Q. In what notes are the spring mentioned?

A. Mr. Owens handled the notes, I handled the compass.

Q. Then, if Mr. Owens handled the notes and you handled

the compass, did Mr. Owens locate the south line of the Rodriguez grant, or did you locate it?

A. Both of us. It says "69 to Sulphur Springs from the southeast of section twenty-one".

750 Q. You are now reading from the field notes of the survey of section twenty-one, are you not?

A. Yes, sir.

Q. Is there in those field notes of section twenty-one anything whatever to locate the south line of the Rodriguez grant?

A. They don't state where they strike the grant line.

Q. Answer the question, is there anything—

A. No, sir.

Q. Then, to locate the south line of the grant as its true location as bounding the lines which are bounded by the United States, you would have to use the field notes of the grant—would you not have to use the field notes of the grant?

A. I would.

Q. When, therefore, you use the field notes of the grant to make the south line conform to natural objects as the spring and the pond, why did you reject the distance given in the field notes as noted in the intersections of west line of the grant, with the north and south lines of the abutting fractional sections?

A. The difference in the measurements, the map is misleading from the field notes.

Q. In what respect does the map differ from the field notes?

A. It shows the grant line to be three chains and fifteen links south of where the map shows it.

Q. My question was, in what respect did the map, meaning the map filed in evidence, and officially certified to by the surveyor general of Florida, as the plat of the Rodriguez grant, differ from the field notes of the Rodriguez grant, also certified to by the surveyor general of Florida and filed in evidence?

A. The grant line is marked three chains and fifteen links south of where this government map represents it to be.

Q. When you say the map, you refer to the sketch of Alfred Howard?

751 Q. His and my map together.

Q. Then your answer is, that the sketch filed in evidence signed "Alfred Howard" and made by you and Mr. Howard, shows the south line of the Rodriguez grant as adopted

by you to be three chains and fifteen links south of where the official plat filed in evidence and certified to by the surveyor general, makes the location of that south line?

A. Yes, sir.

Q. Why, then, if you adopted the field notes to locate the south line as to the natural objects, did you reject the field notes in its measurement?

A. They did not agree with the measurement exactly.

Q. When you say measurement, do you not refer to a stake found in the ground and certain blazes found on the trees?

A. We found the grant line.

Q. When you say you found the grant line, do you not mean you found a blazed line which you called the grant line?

A. Yes, sir.

Q. What natural objects besides the spring did you find to locate the true south line of the Rodriguez grant?

A. Well, we found the southwest corner of the grant and the old blazes.

Q. When you say you found the southwest corner of the grant, do you not mean that you found a stake which you called the southwest corner of the grant?

A. Yes, sir; marked as described in the field notes.

Q. In locating the true south line of the grant, was it not essential for you to determine whether or not that stake had been moved, if it was an original stake marked by the United States surveyors?

A. The stake could not have been moved from its proper place, because the line was going south to it.

752 Q. Is there any obstacle which would prevent a person who wanted to move that stake from placing an extension of the west line of the Rodriguez grant as surveyed by the United States surveyors, and placing a south line to correspond with such removal?

A. No, sir; I don't think it could be done.

Q. State why it could not be done?

A. Well, because there is no other line there to represent the line.

Q. It is in testimony that in the opinion of Mr. Howard, the fact that these east and west section lines of sections nineteen to twenty-four, varying only five chains from each other, is that no survey was actually made upon the ground; do you share the same opinion with Mr. Howard?

Mr. Cooper:

We object to that question as not asserting facts testified to by Mr. Howard, because Mr. Howard stated that that indicated that those variations were not ascertained on the ground, but that the survey, he did not say that there was no survey made on the ground, he said these variations and distances were not made on the ground.

Q. Because the measurement given on the plat filed in evidence of sections twenty to twenty-four vary five links from each other has been given as a ground for the belief of witnesses called as an expert that the plat and field notes were all office work and that no survey had been made upon the ground to determine the actual measurements of these section lines, do you share in that opinion?

A. I do.

Q. Unless this matter had been called to your attention by counsel, would that have been your opinion on inspection of the plat?

A. It would.

753 Q. The plat in evidence of section twenty-one gives in figures in red ink in the northeast quarter of the fractional section 138.30, what does that indicate?

A. The acres.

Q. The figures in the northeast quarter of the fractional section twenty-one are also 138.30, that indicates the acreage?

A. Acres, yes, sir.

Q. Now the south line of fractional northwest quarter of section twenty-one is approximately forty chains, is it not?

A. Yes, sir.

Q. What must be the measurement of the east and west lines of that fractional northwest quarter to make 138.30 acres —would it not be thirty-four chains and fifty-five links?

Mr. Cooper:

We object to that question on the ground that it is a mathematical computation that anyone can make.

Mr. Dewhurst:

All right, he is an expert surveyor; I would like to have him make it. You have got forty for your base, how much have

you got to have for your perpendicular, in order to make 138.30 acres?

A. Well, I can take time and figure it out if it is necessary.

Q. All right, I want you to figure it out. I have it figured right here before your eye. I want to know the length of the east and west line?

A. Thirty-four and a fraction.

Q. Thirty-four chains and a fraction?

A. Yes, sir.

Q. Then take 138.30 as marked upon the plat as the correct area in fractional northwest quarter of section twenty-one, and its base as forty chains approximately, how far short of forty chains is the north line of that fractional northwest quarter?

A. How far short?

Q. Of forty chains. I will add this to make it
754 short, isn't it just five chains and a fraction?

A. Five and a fraction, yes.

Q. Why, then, if you were seeking to locate the true south boundary line of the Rodriguez grant, did you absolutely ignore the distance given in the field notes of the survey of the Rodriguez grant, when that distance deducted from the eighty chains required to make the west line of section twenty-one conform to the area given on the plat, did you reject that portion of the field notes?

A. We did.

Q. Why?

A. It disagreed with the map.

Q. You say disagreed with the map; do you refer to the map that you and Mr. Howard made?

A. No, the government map made at the Government Land Office.

Q. In what respect does the location of the south line of the Rodriguez grant 5.35 chains south of the north line of the full sections twenty and twenty-one differ from the government plat?

A. The grant line is south—

Q. You are not going to answer my question; the question is, how did it differ from the plat?

A. It differs from the plat.

Q. How?

A. Well, it is marked south of where the plat shows it.

Q. When you say "marked south of where the plat shows it", you mean the trees are blazed south on the line?

A. Yes, sir.

Q. But the plat and the field notes agree?

Q. [A.] Our plat agrees with the field notes; it does not agree with this map.

Q. What field notes does your map agree with?

A. It agrees with the notes we used. This is our chaining (pointing to map made by Howard).

Q. Do you testify that this plat drawn by Alfred Howard agrees with their field notes of the survey of Section Twenty-one or with the field notes of the survey of the Rodriguez Grant?

A. That is the field notes.

755 Mr. Dewhurst: (Dictating).

(Pointing to the map sketch made by Alfred Howard, he says that is the field notes).

Q. The field notes which I refer to are the official field notes furnished by B. E. McLin, commissioner of agriculture, as to Section Twenty-one, and also as to the Rodriguez Grant; does the sketch made by Alfred Howard conform to either of those field notes?

A. It conforms with the field notes of Section Twenty-one.

Q. But it fails to conform with the field notes of the Rodriguez Grant?

A. The field notes disagree with the government map.

Q. When you say the field notes disagree with the government map, please point out in what respect the field notes as furnished by the commissioner of agriculture of either Section Twenty-one or the Rodriguez Grant, differ from the official plat filed in evidence and certified to by the surveyor general?

A. There is 5.35 between the Grant corner and this section line. (Indicating).

(Pointing to the north line of Section Twenty). And there is ninety chains and fifty-seven links between them two corners.

Q. Then, that is your explanation of the difference between the field notes certified to by the commissioner of agriculture, of Sections Twenty-one and of the Rodriguez Grant and of the

official plat of the Rodriguez Grant certified to by the surveyor general?

A. Yes, sir; the grant line would be 4.22 chains north of where it is, that is, where the map would show it, I mean.

Q. What is the width of the pond which is depicted upon Alfred Howard's sketch?

A. We didn't chain it across; the Grant notes
756 call for it to be seven chains, six or seven chains.

Q. This pond was one of the material objects found on the ground by which you located the south line of the Rodriguez Grant more than three chains south of where the plat and the field notes placed it, why then did you fail to chain the measurement across of so material a land mark to determine the true location of the Grant?

A. After chaining to the pond the notes call for fifty-one chains from the southwest corner of the Grant, we chained up 51.90 to the pond and stopped our chaining there.

Q. Is that your answer to my question that you desire to have taken down?

Mr. Cooper:

I think that is what the witness must have stated it for.

Q. State if that is what you want taken down as the reason why you did not extend across it?

A. Because we had located the line satisfactory.

Q. Then, your testimony is that you did not do it because you had already then located the south line of the Rodriguez Grant satisfactorily?

A. Yes, sir.

Q. Was it deemed satisfactory when you had located it to bring the cabin north of it?

A. Yes, sir.

Q. That was deemed satisfactory?

A. Yes, sir; it was north. It was sixty-three feet north of the Grant line.

Q. You have stated that the spring was located on the ground two chains south of where you located the south line of the Rodriguez Grant—

A. Yes, sir.

Q. Wait a minute—Could you see clearly over

757 the ground in that vicinity for any considerable distance?

A. I could see about ten chains.

Q. What was the character of the forest in that vicinity, open or pine woods?

A. Pine timber.

Q. Open pine timber?

A. Yes, sir.

Q. Was there anything to prevent a person—What is the character of that spring, so far as to its size?

A. It is down in a sink hole, it is about twenty feet from an average level of the ground.

Q. And how large is the spring—where it comes out of the ground?

A. It is about five feet across, I reckon.

Q. How much water runs from it?

A. Pretty good flow of it.

Q. Does it appear to be the head of the spring run?

A. Yes, sir.

Q. This spring is mentioned in the survey of Section Twenty-one, how do you account for the fact that so marked a natural object is not mentioned in the field notes of the survey of the Rodriguez Grant?

A. I could not say, sir.

Q. You have no reasonable method of accounting for that?

A. The notes say they cross north of the spring, cross the east line of Section Twenty-one.

Q. Please state what you mean when you say that the notes say that they cross the edge of the spring at the west line of Section Twenty-one?

A. The east line of twenty-one.

Q. Well, do you refer to that language in the field notes of the survey of the Grant, which reads "83.50 chains X west line of Section Twenty-two in edge of branch of White Sulphur Springs?

A. That is it.

Q. That is what you referred to?

A. Yes, sir.

Q. If the true line of the Rodriguez Grant were

758 as you locate it, within two chains of this large Sulphur Springs, how do you account for the fact that the survey of the Rodriguez Grant, in running the south

line fail to make any note of that spring, any note of that spring and its location?

Mr. Cooper:

We object to question, as assuming facts which are not shown by the notes.

Mr. Haskell:

And further, that nowhere in the notes is there any information that mention was made of such objects unless actually run into with the lines of the survey.

Mr. Cooper:

And further, that there is no evidence here showing that the Grant line touches the spring either by the field notes or by the testimony.

Q. Now, you can answer why the surveyor failed to note any mention of it?

A. He just says "crossed line of twenty-one, the east line, north of the spring.

Q. Is that the only ground which you give as your ground why this natural object was not mentioned?

Mr. Cooper:

We object to that question, on the ground that it merely seeks a surmise of the witness as to facts which he has not testified that he knew anything about, why the surveyor did not do so and so.

Q. Now, then, answer the question?

A. Well, things like that, on the surveys the mention part of them and part of them they do not.

Q. Please describe this cabin which you testified to in your direct examination?

A. It is a small cabin built of roughly sawed lumber, rough lumber.

Q. Please give the approximate dimensions of the building?

A. It is about something like 14x16, I suppose.

Q. 14x16?

A. Something like that, I suppose.

759 Q. How near to it did you go?

A. I just went to the side of it.

Q. How correctly do you think your estimate of 14x16 as to its dimensions is?

A. Well, I couldn't say; it might be less than that.

Q. How near it did you go?

A. I went right up to it.

Q. Was there any enclosure about it?

A. There is no fence around it.

Q. Did you look inside of it?

A. No, sir.

Q. Then, the estimate of its size is given from the exterior only?

A. Yes, sir.

Q. Did it have any chimney?

A. No, sir; I don't believe it did.

Q. Have any window?

A. Yes, sir.

Q. How many?

A. One door and one window. I think that is all.

Q. Did any one with you point out that cabin as the particular one in which you were asked to locate its position?

Mr. Cooper:

We object to that question as seeking hearsay testimony.

Q. Answer the question whether anybody pointed out that as the one which you were asked to locate?

A. I was asked to locate the grant line.

Q. Was that the cabin which Mr. Owens told you that he thought was located on the Grant?

Mr. Cooper:

We object to that question as assuming facts not proven, is not in cross-examination, no evidence that Mr. Owens told him anything about a cabin.

Q. Now, you can answer?

A. The cabin that we found there, I was told that it was supposed to have been south of the Grant line.

(That's all).

Mr. Jones:

Q. I will ask you, did you run the west line of Section Twenty-one?

A. No, sir; the place we were working was in Section Twenty.

Q. Did you run the west line of Section Twenty-one?

A. No, sir.

Q. Did you go to the southwest corner of Section Twenty-one?

A. No, sir.

Q. Did you not observe that south of that post that you considered the southwest corner of twenty-one was devoid of timber?

A. We were not at the southwest.

Q. Did you not observe east of the point which you claim the Grant line to cross the east line of twenty-one, that the country east of that was void of timber for five chains?

A. It is timber for nearly ten chains.

Q. Immediately around the spring run?

A. Yes, sir.

Q. And east of the spring run?

A. Yes, sir; some pine timber.

Q. Didn't you observe that was an old field?

A. No, sir.

Q. Didn't you observe that trees along this line which you call the blazed line north of it had been turpentined?

A. There is a few turpentined right along here (indicating) near the southwest corner of the Grant.

Q. How far up?

A. Running east, I suppose a quarter of a mile; and I didn't notice the distance north, probably a hundred and fifty feet, something like that.

Q. Approximately, three chains?

A. No, sir; hardly that.

Q. Did you not observe that—

A. Well, I just noticed some boxed timber, I didn't make any note of that at all.

Q. You noted, however, that the boxed timber did not run up north of this section line?

A. No, sir; it didn't go up that far.

Q. The north lines of Section Twenty-one, the full section?

A. No, sir; it didn't go up that far, I don't think
761 it did. I didn't make any note of that.

Q. Did you or not observe in this blazed line between what you call the southwest corner of the Grant and the northeast corner, and the point where you call the intersection of the Grant line with the east line of twenty-one, did you not observe in that line about half way, a decided swing to the north?

A. No, sir.

Q. You did not notice that swing?

A. No, sir.

(That's all).

Redirect Examination.

Mr. Cooper:

Q. Mr. Morehead, will you please state whether or not the post which you found and considered the southwest corner of the Grant, whether that post was any larger than usual?

A. It was a little taller, not much larger than usual section corner, but it was a little taller.

Q. Was there anything about that fact that would indicate to you that that was not a government post, the fact that it was taller?

A. No, sir.

Q. Mr. Morehead, in making this survey, did you make the survey with one set of field notes or both together?

A. We used one set.

Q. I mean the field notes of the Grant as one set and the field notes of Section Twenty-one as one set.

A. We used one set each.

Q. In making that survey then, you mean you used the notes of one survey in connection with the notes of the other?

A. Yes, sir.

Q. You did not make your survey, then, merely from one set?

A. No, sir.

Q. Can you state whether or not young Mr. Owens, with

whom you went when you went to that corner stake, did he know where the stake was, southwest corner of the Grant?

A. I don't know whether he did or not.

762 Q. Did he tell you where it was?

A. No, sir.

Q. In locating that stake, did you locate it from anything Mr. Owens had told you as to where it was?

A. No, sir; I did not.

Q. Mr. L. J. Owens?

A. No, sir; I did not.

Q. You merely followed the line, as I understand it?

A. I was hunting for the Grant line, where the measurement supposed it to be. I was north of where we found it.

Q. Mr. Morehead, will you state whether or not it is by actual measurement of the depth of blazes in trees or by the entire appearance of a tree and the blaze that you tell the age?

A. It is the depth and the appearance both.

Q. It is not merely by the depth of the blaze, then?

A. Yes, sir.

Q. If you know the depth, you can tell the age of the tree without knowing anything else about the tree?

A. Yes, sir; very closely.

Q. Mr. Morehead, have you ever seen blazes on any trees, blazes that you knew to be sixty years old or thereabouts?

A. I have.

Q. Will you state how the blazes on these trees compared with those trees in appearance in reference to their age?

A. They appeared to be sixty years old.

Q. Do you know of any trees you have ever seen on which you knew blazes were twenty-five years old or thereabouts?

A. Not exactly, I can't mention any right now.

Q. Do you know of any less period of blazes, say fifteen years?

A. Yes, sir; I can mention some made twenty years ago on surveys in my county, Marion County.

Q. Could you tell the difference between those

762½ blazes and the blazes on this line which you have mentioned?

A. Yes, sir.

Q. Mr. Morehead, if that corner stake had been moved from where it originally was situated, if it was the original

stake, how would that have affected the result of your entire survey with reference to these other lines and bearing trees given by the field notes and natural objects.

A. Well, the line blazed to the stake going north and south and east and west—

Q. Well, now, for instance, suppose that stake was moved, say a little west, how would that change the stake with reference to the west boundary line of the Grant?

A. There would not be any line to correspond with it.

Q. Then, it would throw the entire survey out, would it not?

A. Yes, sir.

Q. Mr. Morehead, if these blazes on the tree had been burned as stated on cross-examination, and there had been other blazes of similar age or older on a line blazed in between the north line of twenty-one and the boundary line, which you considered the boundary line, if there had been trees in between these two lines where a line had been blazed, would not these blazes also have burned and been there now?

A. Yes, sir.

Q. Did you find any trees along in here (indicating) showing a blazed line where blazes had been burned from time to time?

A. No, sir.

Q. Mr. Morehead, could a man who was not a surveyor have located this south boundary line as your surveying party did without field notes; that is, could he have verified that line as correct without field notes and without reference to the natural objects, and without reference to the other line of the adjoining tracts, which you found?

A. He could not.

763 Q. Mr. Morehead, with reference to this spring on the east line of Section Twenty-one, was that the only check to your survey to show that it was correct, was that the only feature of the field notes that you regarded as showing you that that line was correct?

A. No, sir; we chained on to the section corner.

Q. Did you find your conclusion as to the correctness of that south boundary line borne out by any other lines or corners or not?

A. No, sir.

Q. You did not find them borne out?

A. No, sir.

Q. You found the field notes of the government, as I understand it, incorrect as to the chaining and distances between the north boundary line of twenty-one and the south boundary line, as you determined it?

A. Yes, sir.

Q. Will you state whether you found the distance given by the field notes of the government from the northwest corner post of twenty-one to the intersection of the west boundary line with the south line of Section Seventeen, will you state whether you found that distance as the field notes gave it?

A. It was forty-two links excess.

Q. Did you find any other incorrectness in the distance given by the government field notes between any points, or did you find the government field notes as to distance otherwise entirely correct?

A. The spring, the first thing, the spring is a chain and twelve links north of where the field notes call for it.

Q. Then, in disregarding this distance, Mr. Morehead, and in conforming to the natural objects, you were not departing from the field notes?

A. No, sir.

Q. You were merely disregarding the distance given in the field notes?

A. Yes, sir.

764 Mr. Jones:

We object to that question as leading and misleading.

Q. What has been your experience, Mr. Morehead, in surveying grants or public lands according to government field notes with reference to distances given—the accuracy of the distance given in the field notes in the past?

A. Sometimes in a section line a mile I will find three chains excess; sometimes I will find it short of it.

Q. How about the distance to bearing trees?

A. Well, the distance to bearing trees, you can't rely upon them every time.

Q. What do you go by?

A. If the tree is in the right course from the corner that is accepted before the chaining.

Q. Mr. Morehead, if the chaining is shown by the field notes and the government plat is incorrect as shown on that plat, in your opinion, would the acreage as shown on that plat naturally be correct or incorrect?

A. The acreage on the map would be very near correct.

Q. If the chaining was wrong?

A. Yes, sir.

Q. How do you make that out?

A. Because the Grant line don't appear where it is figured to be.

Q. Well, now, I am referring to the acreage of the section, this acreage that was referred to, in this plat, and you find from measurement here that this chaining from the grant line to the south line of twenty-one, for instance, is incorrect, would you expect to find the acreage correct?

A. No, sir; I would not, you couldn't accept the acreage from it.

Q. You would have to hunt for the whole line?

A. Yes, sir.

Q. That has been your experience?

A. Yes, sir.

765 Q. Mr. Morehead, you stated on cross-examination that you were satisfied with the grant line when you found it south of the cabin; will you please state what your purpose was in going to locate the Grant line—whether you went there determined to find the cabin on the grant, regardless of the accuracy of the survey or not?

A. Yes, sir; I was instructed to find out if the cabin was in the Grant.

Q. Were you instructed to find out whether it was out or not?

A. I was.

Q. You were not simply told to go find the cabin on the grant?

A. No, sir; I was told to establish the Grant line, find out where the cabin was.

Q. What effect did the question of whether that cabin was on the Grant or off the Grant have on your survey; in other words, that that effect the accuracy or inaccuracy of your survey at all?

A. No, sir.

Q. I will ask you whether or not the fact that the distance

from the stake at the northwest corner of twenty-one to the intersection of the west boundary of the Grant with the north line of twenty corresponded with the distance from the unmarked stake at the intersection of the west line of twenty with the boundary line to the south stake of the Grant by any check or in your survey?

A. It did not check.

Q. Was this stake at the intersection or not?

A. No, sir; it disagreed with the measurement on the north.

Q. Did you find the intersection of the line by any marks?

A. No, sir.

Q. That was not shown?

A. No, sir; the Grant line was marked plain east and west; we couldn't check that corner.

(That's all).

766 Recross Examination.

Mr. Dewhurst:

Q. You have stated in your redirect examination that the measurement of the distance from the northwest corner of Section Twenty-one to the east line of Section Seventeen as found upon the ground exceeded by forty-three links, the distance given in the field notes?

A. Forty-two links.

Q. As given in the field notes.

A. Yes, sir; the measurement on the south line of the Grant.

Q. Will you point out in the field notes where that distance you refer to between the northwest corner of Section Twenty-one and the east line of fractional Section Seventeen is given?

A. (The witness points out that beginning the survey of the south line of the Grant the field notes that "thence east on the south line of this survey 3.81 chains across west line of Section Twenty-one.")

(That's all).

(Witness excused).

Mr. Dewhurst:

Now, we move to strike all the testimony of Mr. Morehead, on the ground that the testimony is contradictory of the admissions on the record made by the defendant, and also it is contradictory with the data filed in evidence which the witness claims to have used upon which to base his survey.

Mr. Haskell:

And defendants contend that in regard to this objection and motion to strike that except so far as witness has been misled by the complainant's counsel in putting his questions, there are no contradictions in his testimony.

Thereupon, the hearing was adjourned until two o'clock p. m. of the same day.

767 2:30 o'clock P. M.

It is hereby consented by counsel for the respective parties in this case that the witness, L. J Owens, would testified [testify] to the same facts with reference to identifying and comparing and the contents of the copies of the field notes which were used by the witness, L. J. Owens, and the witnesses Howard and Morehead, in making the survey involved in this hearing as are testified to by the witness Howard and Morehead.

Thereupon, the defendant to further maintain the issues upon its part produced and caused to be sworn as a witness, one L. J. OWENS, who testified as follows:

Direct Examination.

Mr. Cooper:

Q. What is your name?

A. L. J. Owens.

Q. What is your business or occupation, Mr. Owens, at present?

A. Why, I survey more than anything else, Mr. Cooper.

Q. In whose employ are you at present?

A. Wilson Cypress Company.

Q. The defendant in this case?

A. Yes, sir.

Q. Will you state what experience you have had as a surveyor, if any?

A. Well, I have been surveying for more than twenty-five years, largely retracing, resurveying, retracing lines.

Q. Have you had any experience in surveying wild lands and timber lands?

A. Yes, sir.

Q. According to government surveys?

A. Yes, sir.

Q. Will you state whether or not you have made any recent survey of any lines of the Teresa Rodriguez Grant in Lake County, Florida?

768 A. Yes, sir; on the last day of February and the first day of March of this year, I, in company with Mr. Morehead and Mr. Howard, made a survey of Section Twenty-one, and part of the Grant adjoining Section Twenty-one.

Q. In making this survey, did you and this party use the notes and copies of the notes which I hand you?

A. We did; yes, sir. Those are the notes.

Q. Now, Mr. Owens, please state just in the order in which you made your survey—state what you did, beginning from the beginning?

A. We located the southeast corner of Section Twenty-one and made a survey of the east line of twenty-one, running north from the southeast corner.

Q. Now, before you go any further, Mr. Owens, state whether or not you have ever seen that drawing or chart before?

A. Yes, sir; I saw that, was present.

Q. Who made that chart?

A. Mr. Howard and myself and Mr. Morehead.

Q. When was that chart made with reference to this survey?

A. We made it from our notes on our return.

Q. The next day?

A. Yes, sir.

Q. Does that drawing represent the lines or any lines which you surveyed?

A. Yes, sir.

Q. Will you explain from that drawing, on [or] in con-

nection with that drawing if you deem it convenient, what you did, and indicate on the drawing as you go along, what points you went to or what lines you surveyed. You stated you started at the southeast?

A. We surveyed the line to the northeast corner and found it one chain and thirty-seven links in excess of what the field notes of the section claimed it to be.

Q. Did you find anything at the southeast corner of Section Twenty-one?

A. Found what I considered the original govern-
769 ment post and with the original mark.

Q. How did you know that was the original government post, Mr. Owens?

A. Why, from the age apparently.

Q. Were there any marks on the post or not?

A. Three sides of it, one was completely, I believe, worn out by the weather.

Q. What were those marks?

A. 21, 27, 28.

Q. Were those marks on there?

A. Yes, sir.

Q. Go ahead, Mr. Owens; state just what you did now?

A. We tried to see—we tried to ascertain if there was any signs of a line ever having been run south of the north line of Section Twenty-one for the grant line. We used the notes and figured practically where to look for this crossing of the east line of Section Twenty-one of the grant line and failed to find any evidence. Mr. Morehead went in an easterly direction from the point according to the field notes, where they stated we should find the grant line, south grant line. I was in company with him and he found nothing; he went across, he returned southeast across a branch and about ten chains—five chains to ten—we never measured it—southeast. Mr. Morehead found a tree and a light-wood stump with some blazes on it, old blazes, from all appearances they could have been as old as sixty years. Then I, in company with him, went west; he set his instrument at those blazes, he took a west course, and I went in company with him for about half a mile. He continued that course west. I took a team around to overhaul him at the old grant corner a mile west of this crossing of the east line of Section Twenty-one. From that point we began checking up to verify the exactness of the

grant corner; the old corner, standing apparently, well I took
it to be as old as the section corners—these other
770 section corners we had already found on twenty-one,
and marked "X R," the post was, and we proved the bearing, the notes only gave one bearing; we proved that apparently as the direction the field notes claim it to be from this point. We then chained north from the post on the old blazed line nine chains and fifty-seven links to the north line of Section Twenty. An old post stands there, the field notes gave no bearings for it. We followed that line north line of twenty east.

Q. Was that line marked in any way?

A. Very plainly, old original government section line, north line of twenty at this point marked very plain; we followed it four chains and twenty-two and a half links east and found the old original government post to the northeast corner of Section Twenty-one, proved it up by the bearings. I believe there was one bearing gone there as well as I remember, we found three bearings all in good position. Mr. Howard and my son had chained this line from the south west corner of the grant, this old corner post, and found it to be—

Mr. Dewhurst:

Wait a minute. We object to what they found it to be, on the ground that it is hearsay.

A. And found it to be nine chains and fifty-seven links from the grant corner to the north line of Section Twenty.

Q. Can you state of your own knowledge whether that chaining was correct?

A. That chaining was correct. Mr. Morehead and I took the chain and chained it back from where the grant line crosses the north line of Section Twenty southward to the grant corner, and there was not a variation of an inch between the measurement of Mr. Morehead and myself and Mr. Howard and my son.

Q. Did you use a chain or tape in these measurements, Mr. Owens?

A. We used a tape, a hundred-foot tape. We
771 then, Mr. Morehead using his compass, Mr. Howard
and I looking as to the directions, found a very plain blazed line running east from this old grant corner, and we

followed it, my son and Mr. Howard chaining, and at the distance of fifty-one chains and ninety links we come to a pond, that must have been some five or six chains across, the field notes give it six, I believe. We didn't chain any further on that line. I came down on the south end of the pond, went to the east side and set a flag stake for Mr. Morehead and Mr. Howard. While they were going around, I passed northward from this point on the east edge of the pond to see if it was possible that there could have been a line run where it was plain from the notes disagreeing with the chaining, to have hit that pond, nut [but] there could not have been a line run hitting that pond without running right to where this line is, the very one, because the pond runs north forty-five degrees east.

Q. Measured from the west boundary of the grant, you mean?

A. Measured from the west boundary of the grant; we chained to this pond.

Q. You said that the line had been blazed further north, from what point?

A. From this point to the northward it would have missed the pond, the pond is only four chains from this old blazed line to the north end of the pond. We followed this old blazed grant line to the bank of the creek of the Sulphur Springs; the old survey and our survey agrees on the east line of section twenty-one. We had hunted, as I believe I have already remarked, see if I could find any line between this point at our crossing, the crossing of the old blazed line of the east section line of twenty-one, we had hunted all from there to the north line of section twenty-one to see if we could find
772 any line. We hunted back for a quarter of a mile and at that point (indicating) the southwest corner of the grant; I went and set a stake at the northwest corner of section twenty-one, and to check up the line of the west line of twenty-one running south from the northwest corner, I as well searching for blazes from near the northeast corner to section twenty-one, I hunted for blazes all the way from these old blazes to the grant line north to the north line of section twenty-one. I did not find any; I did not find any there.

Q. Did you find any stake or post through this you have described anywhere?

A. Northeast corner post I have mentioned, section twenty-one was standing. The post at the intersection of the west grant line at the crossing of north line of section twenty was an old post standing. East four chains and twenty-two links from the southwest corner of the grant, at the crossing of the west line of section twenty-one there is an old post standing.

Q. Was that old post exactly at the intersection or not?

A. It was not exactly.

Q. Was that post marked in any way?

A. No axe marks, blazes had—

Mr. Dewhurst:

Q. Which intersection are you talking about now?

A. The old blazed line, the south line of the grant.

Mr. Cooper:

Q. And the west line of twenty-one?

A. And the west line of section twenty-one.

Q. Mr. Owens, will you state whether or not you have had any experience in judging of the age of blazes on trees?

A. I have.

Q. Or of stakes?

A. I have.

Q. Have you ever had any experience in judg-
773 ing of the age of timber, whether it is new growth or old timber?

A. I have.

Q. State, Mr. Owens, in your opinion, if you can, what you would judge the age of those blazes on that south line which you have described and which you considered the boundary line of the grant to be?

A. They are undoubtedly as old as the survey was claimed to have been made, which was some sixty years ago, I believe.

Q. Mr. Owens, how much of the distance along the south boundary line of the grant between the north line of twenty-one and the south boundary line of the grant, how much of that distance did you search for other blazed lines; I mean both toward the east and the west end?

A. I searched eastward nearly a quarter of a mile, which brought me to the swamp.

Q. And you quit there?

A. I quit that.

Q. Did you find any other line?

A. No line whatever.

Q. No line whatever?

A. West there might have been—there was some blazes on a tree west of this section line not far from the line along a trail that was a few years old, might have been possibly ten years old.

Q. Mr. Owens, as far as you looked through the eastern end of twenty-one which you say you searched, what was the condition of the timber with reference to the age of the trees, in connection with the possibility of there having been any line there, in other words, was there or was there not timber where those blazes would have been?

A. East of this line the timber was scattering. East of this line of section twenty-one? The timber was scattering.

Q. How was the timber along the old line which you found, how did that compare?

774 A. That was scattering at this point; it was scattering, too.

Q. But was it any more scattering than it was where the line was blazed?

A. No, about the same.

Q. What was the age of the trees along where you searched for another line, were those trees new growth?

A. No, they were old growth. They were, unquestionably, over a hundred years old.

Q. Now, then, take up the search at the other end in regard to the number of trees, and the conditions?

A. The trees are very thick, standing timber.

Q. Is that new growth?

A. No, it is old growth.

Q. In your opinion, if there had been any other blazed line there made at the same time or made prior to that time, is there sufficient timber there for that line to have appeared now?

A. Yes, sir; there certainly is.

Q. What is the age of the trees along there, as near as you can judge; are they new growth?

A. No, it is old; there is lots of it over a hundred years old unquestionably.

Q. What experience have you had in the woods, Mr. Owens, in judging of the age of trees?

A. Well, I am in the woods, have been in the woods greatest part of my time for the last twenty-five years and I sometimes am over the same timber now that I was twenty-five years ago.

Q. Mr. Owens, did you find any stake or post that might have been marked a crossing of the grant line and the east line of section twenty-one, north of the point which you determined to be the intersection of those two lines?

A. No, sir.

775 Q. Did you make any investigation for that?

A. Yes, sir; we hunted for it as well as hunting for the line.

Q. Mr. Owens, how, in your opinion, did the post at the southwest corner of the grant compare in age with the post at the northwest corner of twenty-one?

A. They were very nearly apparently the same age, they appeared to be as near as I can judge.

Q. Will you state whether there were or were not any other natural objects than those which you have mentioned which assisted you in determining where the grant line was from the field notes, were there any other marks that you have not mentioned that you recollect?

A. Why, I have mentioned the pond and this Sulphur Springs run, makes it very clear that the grant line was originally run at the point we ran it following these old blazes, and the fact that they could not have crossed, could not have hit the spring run or been close to it after going even two chains north of this point that we find the old line crossing the east line of section twenty-one, to have gone north two chains even from that point and then run east, it would have been something like eight or ten chains before you reach the spring run, it turns off so abrupt northeast from this point at which we intersected the old line, the blazed line which we find intersects.

Q. Mr. Owens, how did you find through that survey the distance or chaining given in the field notes, the two sets of field notes, corresponded with the distance according to the natural objects and the various stakes which you have mentioned by actual measurement on the ground?

A. Bearing trees to these corners for instance?

Q. All objects of that kind.

Q. [A.] Why, there is a variation in almost every one in the distance; the bearing trees of the corners are
776 given compare all right, but the distance in some instances, the distance measures up according to the field notes, but the most of them, the distances vary.

Q. That distance, then, between the north boundary of section twenty-one and the blazed line which you determined to be the south boundary line of the grant, that difference in the distance was not the only difference which you have discovered in surveying?

A. It was not.

Q. Did you ever live in that vicinity, Mr. Owens?

A. I have.

Q. How long have you known this Teresa Rodriguez grant?

A. The first time I was ever on it was January, 1871.

Q. Did you know at that time where the boundaries of that grant were?

A. I did not.

A. How long have you known anything about the boundaries of that grant?

A. In 1880 I ran a sawmill—1880 and 1881, I ran a sawmill located on that grant, and became familiar with some of these boundary lines of the grant at that time.

Q. Which boundaries did you become familiar with?

A. The west and south.

Q. Can you state whether or not that boundary was marked where it is now, when you first knew it?

A. It was, so far as every point that was connected with it then is the same line today.

778 Q. Did you ever know of any other line on the south of that grant that was considered the south grant line?

A. No, sir; I never did.

Q. Do you know, from living in that community, Mr. Owens, whether or not the blazed line about which you have testified, has been considered the south boundary line of the grant?

A. Is it. [It is.]

Q. Who sent you to make this survey, Mr. Owens?

A. Wilson Cypress Company.

Q. What were your instructions in making this survey, with regard to running the line of this grant correctly, if you know?

A. I don't understand your question, quite, Mr. Cooper.

Q. What were your instructions with regard to locating this grant line?

A. With the object of ascertaining the exact location or practically the exact location of a house that the Wilson Cypress Company owns, a small house on the south part of the grant.

Q. Were your instructions to find that house in the grant, or were your instructions to find the grant line?

A. To find the grant line.

Q. Was your survey influenced in any way by the question of whether or not that cabin was in the grant line?

A. Not in the slightest.

Q. Were your instructions to find the grant line correctly by survey or not?

A. They were.

Q. Where, in your opinion, Mr. Owens, as a surveyor, is that grant line correctly located according to the field notes which you used?

A. It is located, this blazed line that—

Q. You consider that blazed line is the grant line?

A. I do beyond any question.

779 Q. And that is what?

A. Nine chains and ten links south of the northeast corner of section twenty-one, and nine chains and fifty-seven links south of the northwest corner of section twenty-one.

Q. In referring all along to this north line of section twenty-one, the corners, are you referring to the full section or fractional section?

A. From the section corner to section corner in the grant.

Q. With relation to this blazed line, Mr. Owens, where was that house or cabin with reference to which you have testified?

A. It stands sixty-three feet north of this blazed line that we determined to be the south grant line.

Q. What part of the north line of section twenty-one is it near?

A. It is about fourteen or fifteen chains west of the east line of section twenty-one.

Q. Between the north line of section twenty-one of old section line and the blazed line which you determine to be the grant line?

A. Yes, sir.

Q. Mr. Owens, what did you find the distance—did you find the distance from the southeast corner of section twenty-one to the northeast corner of section twenty-one agreed according to the field notes?

A. It is one chain and thirty-seven links longer than the field notes claim it to be.

Q. What did you find to be the distance if you recollect, from the northeast corner of twenty-one, to the Sulphur Springs, which you have mentioned?

A. Eleven chains and eleven links, from Sulphur Spring to the northeast corner of section twenty-one.

Q. Where does that spring lie with reference to the east line of section twenty-one?

A. East line of twenty-one runs through it.

780 Q. Did your survey correspond with that?

A. Yes, sir.

Q. Did you find that to be true?

A. Yes, our survey line went through it.

Q. Mr. Owens, did you examine the west boundary line of the grant for any marks of that line, or did you see any marks on that line?

A. I did.

Q. Describe those marks and what they were?

A. Why, it was the west line, the blazes appeared to be identical with those on the south line as to age, old blazes, placed in the same manner apparently at the same time, very old blazes.

Q. You say you saw blazes on the north line of section twenty?

A. We did.

Q. You testified, I understand, that that line was marked?

A. Very plainly, yes, sir.

Q. How was that line marked?

A. It was marked by two hacks.

Q. How did the age of those hacks compare with the blazes of the west boundary line?

A. Very favorably.
Q. What do you mean by that?
A. It appeared to be about the same age.
Q. Would you judge that they are old hacks?
A. They are, undoubtedly.
Q. Was that line dim or was that line clear?
A. It was very clear.
(That's all.)

Cross-Examination.

Mr. Dewhurst:

Q. Where did you learn surveying?

A. Why, I surveyed, the first surveying I ever did was under my uncle, something like twenty-five or thirty years ago.

Q. What did you do under your uncle as a surveyor?

A. Well, I—first did some work under his in-
781 structions re-running section lines, old section lines, and establishing or finding the original corners.

Q. Where was this work done?

A. Lake County.

Q. What lines?

A. Why, township lines, in township eighteen, twenty-eight, adjoining township to this grant, township north of that; I lived in township eighteen; I lived there twenty-eight years.

Q. What other work have you done in surveying?

A. Why, I have been surveying from time to time.

Q. How often over the twenty-five years?

A. Why, I am tracing old lines all the time; I have been practically for twenty-five years I have done very little else.

Q. How long have you been working for the Wilson Cypress Company?

A. About ten years, I reckon. I surveyed some of them over fifteen years ago, but I have been regularly in their employ for about something like ten years.

Q. Your chief work as a surveyor has been to trace old lines?

A. Yes, sir; largely. I have to subdivide some sections, but chiefly their holdings is largely whole sections; it does not require subdivisions.

Q. Do you find in re-running lines surveyed by the United States Government that the corner posts are generally found at the corners and half section lines of a section?

A. A great many of them.

Q. Do you know whether or not when the surveys were made by the United States, whether the United States surveyors did post the section corners, and half section corners?

A. They were supposed to, and claimed to in almost every instance, but this particular one—

Q. Is it your knowledge that the rules of the United States surveys require section corners and half sections to be posted?

A. Well, it was not generally invariably, in some places, in deep water.

782 Q. In such case the corner posts and half corner posts might be omitted by the surveyors but not ordinarily, run through ordinary lands? They could place those posts at the corner and half corner sections?

A. Yes, sir.

Q. And you have found that to be your experience in retracing lines that they had both?

A. Yes, sir; invariably.

Q. You say that you began to measure from the southeast corner of section twenty-one to locate the line—your purpose being to locate the south line of the Rodriguez grant?

A. Exactly.

Q. And that you ran the south line seventy-four chains—Wait a minute. I don't know that you did say so, you ran the distance north by the field notes to locate to where the south line of the grant should be located according to the field notes and failed to find it?

A. Found no evidence of it.

Q. You also said that in 1880 you had run the south and west lines of the grant?

A. 1880 and 1881 I became familiar with the location.

Q. Why, then, if you knew the location of the south line of the grant thirty years ago, did you go to the southeast corner of section twenty-one and undertake to measure to it?

A. Why, purposely to satisfy the others, purposely; I knew where the grant line was all the time. I let the other parties, Mr. Howard and Mr. Morehead, locate it for themselves.

Q. Is it not a fact that that cabin was located under your directions?

A. It might have been. I think Mr. Boykin, as well as myself, knew where the grant line was, where every-
783 body considered the line; the only line anybody claimed to be the grant line.

Q. Didn't you testify in this case that you located that cabin and had it built?

A. In this case?

Q. Yes?

A. I don't think I did.

Q. Is it not a fact that it was built under your supervision?

A. Mr. Boykin may have built it under my instructions; we were over the line before he built it.

Q. Is not Mr. Boykin under your supervision?

A. No, sir; he is under the Wilson Cypress Company's supervision.

Q. Who says what Mr. Boykin does for the Wilson Cypress Company and reports as to his doings?

A. Well, if I happen to be there and have any occasion to make a report I would report, if anyone else working for the Wilson Cypress Company would be just as liable to make a report, if they were on the ground as I were, in regard to Mr. Boykin.

Q. Didn't you testify in this case that the cabin was in the southwest corner of this grant?

A. No, I did not.

Q. Did you testify in this case that the south line of the grant ran about seventy yards south of the north line of sections twenty-one and twenty-two?

A. I couldn't say that I did.

Q. Can you say that you did not?

A. If I did, it was in reference to the north line of the grant between the north line of the grant and the section lines south, they were about seventy yards apart on the north, considered so. I never chained the distance on the north.

Q. Did you testify in this case that you were thoroughly familiar with the section lines of the public surveys and of the exterior lines of this grant and had been for many years?

A. I have been on them, on almost all of them numbers of times.

784 Q. Didn't you testify that you were thoroughly familiar with them?

A. Why, I know where they are.
Q. And had been for many years?
A. I know where they are.

Mr. Jones:

Q. Didn't you so testify; that is the question?
A. I might have.
Q. You may have so testified?
A. I am fairly familiar with them, quite familiar with them; with most of them.
Q. How do you determine the age of a blaze found on the west line of the grant, that you found, how do you determine the age of those blazes?
A. Same as I did on the south line.
Q. Well, how do you determine those?
A. From the appearance and conditions there; the conditions they are in, and the condition of the trees.
Q. Would the comparative growth of a tree, whether rapid or slow, make a difference in the appearance of a blaze thirty years old?
A. Yes, for instance, rapid growth the bark grows over the blaze and covers it up entirely in a few years.
Q. Well, are the trees on the line of this grant growing rapidly or slowly?
A. They are growing slowly, most of them. While there was a few I observed, one tree in particular, that had no sign of a mark on it, still I am satisfied I can go and mark over it—it is grown over inside.
Q. Taking the sketch drawn by Mr. Howard, please state whether at the intersection of the blazed line adopted by you as the south line of the grant, and the east line of section twenty-one, you found standing a post?
A. No.
Q. No post found there?
A. No.
Q. What kind of a post did you find at the intersection of the west line which you adopted as the south line
785 of the grant?
A. It was a lightwood post.
Q. Describe it, please.
A. Well, a small—at the crossing of the west line of twenty-one?

Q. Yes, sir?

A. Small post about two feet high, perhaps three inches in diameter.

Q. About how old?

A. Well it didn't have the appearance of being as old as the grant corner post.

Q. By how much did it differ in appearance as to age?

A. Why, it didn't appear to have grown for an age, since it was axed off.

Q. Continuing on the blazed line which you adopted as the south line of the grant, what was the next post which you found marking the intersection of any of the eastern sections according to the public survey?

A. After crossing the west line of twenty-one?

A. [Q.] East line of twenty-one, going east.

A. Why, we didn't follow that line far enough after crossing the east line of twenty-one to have gone to the next mile post.

Q. Did you follow it far enough to go to the half mile post?

A. Wouldn't be any half mile post on the grant line; I would not have expected one at any rate.

Q. Why wouldn't the surveyor have put a half mile post at the intersection of the grant line and the public survey?

A. Why, I never find them; in this instance didn't find one going this mile we were on.

Q. Did you ever know of any other Spanish grant except this Rodriguez grant that had the lines surveyed within it according to the public surveys?

A. Yes, one we call Spring Creek grant, at the head of Spring Creek.

Q. What is the name of the grant?

786 A. I will have to refer to the map.

Q. I wish you would and also tell me where Spring Creek is?

A. Moses E. Levy grant, in Lake County.

Q. In township sixteen, range twenty-seven?

A. Yes, sir.

Q. What other Spanish grant did you ever know of that is surveyed within its exterior lines, the lands by the sections in that mile square?

A. They are the only ones that I come in contact with through the field notes on—

A. [Q.] All other Spanish grants, the exterior lines about the entire tract is the only survey of the grant that you have ever found?

A. I am not posted; I wouldn't say the others I found exterior lines, even of this, but I have the field notes of this Moses Levy grant in township sixteen, range twenty-seven, I have the notes and have surveyed some adjoining it, have surveyed into it to take some points.

Q. Then the one post which you found marking the northwest corner of fractional section twenty-one had evidently been placed there a short time ago?

A. It might have been placed there twenty years ago, a short time is twenty years. It didn't appear to be as old as the grant corner, southwest corner of the grant.

Q. Being familiar with the exterior lines of that grant and the section lines in and about it, state whether or not as to the other abutting sections on it on the north, the corner post of the fractional sections where they intersect the grant line as blazed by the United States surveyors, were found out, any time since you have known the grant?

A. I don't know as I remember of any one on the north.

Q. State whether or not you remember whether or not any were found on the west line of the grant where the fractional section abutted on the west line of the grant?

787 A. Yes, sir.

Q. How many of those are found?

A. Why, on the west line of the grant the section posts of the line between sections eight and seventeen, where it strikes the grant, it is standing, the old original post.

Q. And the one between seventeen and twenty, you say you found?

A. The one between seventeen and twenty, the one standing there, old post, apparently as old as it seems, as though it might have been as old as the grant corner.

Q. And did you testify on your direct examination that the post had any marks, the one that stands on the grant line, between sections seventeen and twenty?

A. Only axe marks, just being hewed off.

Q. Had no surveyor's marks?

A. No, sir; had no—I don't think, I didn't detect any.

Q. You say that when you got to the pond you paced off the distance north of it to see where the south line of the Rodriguez tract would strike it, that it was run five chains and thirty-five links south of the north line of sections twenty-one and twenty-two, did you?

A. I did, in order to prove conclusively that the line we were on was the original grant line run by the original survey.

Q. Who suggested that particular point of evidence as the conclusive proof of the true location of the grant?

A. It makes it absolute; I wanted to be certain about that without any doubt as possible this south line we recognized as the south line of the grant as being the correct and originally run line.

Q. Your desire was to prove the fact that the blazed line was the south line of the grant?

A. I was after proving my own mind and conclusively to helping or assisting a conclusive proof.

788 Q. Who suggested that as the method of establishing that line as conclusive evidence?

A. The field notes.

Q. No, the field notes say that the south line of the grant strikes the pond fifty-one chains from the southwest corner.

A. Well, we found it fifty-one ninety; that is we found it even chains, they sometimes give links in the government surveys.

Q. Then you had the field notes as to that distance, the south line measured to strike the pond and you assumed that that distance given in the field notes was right, did you not?

A. I came fully to the conclusion that I was on the originally run line at this point?

Q. My question was whether or not you didn't accept this measurement of fifty-one chains given in the field notes as the distance from the southwest corner to the grass pond as a correct statement?

A. It is within less than a chain.

Q. Then you took that measurement of the field notes to be absolutely correct, or approximately correct?

A. No, I never take any field notes to be absolutely correct in the measurement for I rarely ever find them so.

Q. You used, however, this measurement, to enable you to establish the south line of the grant?

A. Well, it proved that they strike this pond on this identical line.

Q. How does it prove that they strike the pond at that distance?

A. Well, the variation, they could not have struck the pond if they had gone north.

Q. Well, isn't it proof that they strike it, the fact that they make the note in the field notes, that they did so?

789 A. Well, we look for it when we see it in the field notes, find a memorandum like that we look for any distance in—

Q. Now, you haven't answered the question who of you or Mr. Howard or Mr. Morehead suggested that that would be conclusive proof that the blazed line was the south line of the grant, if it was shown that to run it north three chains would not strike the pond at fifty-one chains distance?

Mr. Cooper:

We object to that question on the ground that it assumes facts not proven, in that it assumes that that was the only check or reason for that line, and the witness has stated other reasons.

Q. Now, Mr. Owens, let's see whose mind evolved this thing?

A. Why, it was not suggested by anybody to me; I did it of my own accord.

Q. Then you were the one that originated that as the evidence to be used to locate the true south line of the grant?

A. From the reading of the field notes I expected to find a pond, which I did.

Q. You stated that if the field notes of the grant should be run three chains or more north of the blazed line as you established it, that it would not strike the Sulphur Spring run for eight or ten chains beyond the east line of section twenty-one, did you not?

A. I did, east of the east line of section twenty-one.

Q. How do you account for the fact, then, that the field notes state that the south line of the grant crosses the Sulphur Spring run at a distance of eighty-three chains and eighty links from the southwest corner, if as you surveyed the blazed line on the ground, it was apparent to you that the south line of

the grant as located by the field notes five chains and thirty-five links south of the north line of section twenty-
790 one and twenty-two would not strike Sulphur Springs run short of ninety-two or ninety-four chains east of the southwest corner, how do you account for the fact that the field notes say that the south line strikes that run at eighty-three chains and eighty links east of it?

A. Well, it does strike it a little over eighty-three; the grant line crosses the east line of section twenty-one right on the bank of the spring run.

Q. When you say grant line, do you refer to the blazed line?

A. The blazed line.

Q. I will ask you with reference to the line described in the field notes and on the plat, how do you account for the fact that the field notes and the plat describe the location of Sulphur Springs run as eighty-three chains and eighty-one links east of the southwest corner of the grant, if the distance given is so far wrong as eight or ten chains locating the south line of the grant 5.36 chains south of the north line of section twenty-one?

A. There is no such discrepancy. In fact there would be, run from that point, there would be a discrepancy, yes—run from that point five chains and thirty-five links. Running from parallel to the section lines north of twenty-one and the grant line from a point five chains and thirty-five links south of the intersection of the north line of section twenty of the grant run east parallel from there to Sulphur Spring run there would be an excess of eight or ten chains. I don't know how to account for it, but it is a fact all the same.

Q. Now, you say that on the west line the section post between sections seventeen, is there a well marked line, on that blazed line between section seventeen and section twenty, is there a well marked line?

791 A. Very plainly marked, near the grant line; I didn't follow it all the way back.

Q. Now, then, how can it be possible that the Teresa Rodriguez grant could have been run down on the west line of these particular intersections with these sections, noted according to the field notes, which correspond with the public survey, and the distance south of the south line of section seventeen and the north line of section twenty noted in the field notes

as five chains and thirty-five links, and yet if that south line is run according to those field notes it will make a variance of ten chains in the measurement of the first mile run?

A. Run according to the field notes it will do how? If run five chains and thirty-five links south of the intersection of the north line of section twenty with the grant—I can't account for the discrepancy that was made in the field notes and the actual survey.

Q. You are therefore unable to account for the fact that the field notes should check with the actual survey on the ground as to the west line, and make a variance of ten chains in eighty chains on the south line?

Mr. Cooper:

We object to that question on the ground that it assumes facts not proven.

Q. Can you account for it?

A. Account for what, the south line?

Q. Such discrepancy as that in the measurement of ten chains on the south line in running eighty chains?

A. Well, there wasn't that discrepancy in running it.

Q. You mean by that if your blazed line is the actual line which the M. A. Williams ran in 1851, then there is not that discrepancy, do you not?

792 A. There is not that much discrepancy.

Q. But if M. A. Williams ran the line which he says he ran, in his field notes as the south line of the Rodriguez grant, then there was a discrepancy of eight to ten chains in the first eighty chains run?

A. He says he run across this lake to the pond, to the spring run of the section line—no, not in the first chains run. It would eliminate the crossing of the spring run at the place he claims it to be and the actual old blazed line does cross.

Q. If M. A. Williams ran the south line of the Rodriguez grant, according to his field notes five chains and sixty-five links south of the north line of section twenty-one, could he have crossed Sulphur Spring run at a distance of eighty-three chains and eighty links from the southwest corner, east from the southwest corner of the grant or anywhere near there?

Mr. Haskell:

We object to that as stating distances and measurements not contained in any plat or in testimony heretofore given in this case.

A. In running parallel with the grant line and section lines.

Q. Then, when M. A. Williams says in his field notes that he did cross section twenty-two in the edge of the branch on White Sulphur Springs seventy-four chains and sixty links north of the southwest corner at a point eighty-three chains and eighty links east of the southwest corner, he states what is not a fact?

A. [Q.] Do you mean to say you measured a line running east and west parallel to the north line of section twenty-one running from a point five chains and thirty-five links south of the north line of section twenty?

793 A. I did not.

Q. Do you mean to say that if such a line was run, it would not strike Sulphur Springs run for eight or ten chains, until it reached the pond eight or ten chains east of the east line of section twenty-one?

A. Not if run parallel, not if the line is run parallel to the north line of twenty-one or the blazed grant line.

Q. Did you not testify in this suit that you helped a Mr. Beardall survey the west line of this grant many years ago?

A. I did not; I don't remember that.

Q. Did you help Mr. Beardall survey?

Mr. Cooper:

We object to that question because it is not in cross.

A. No, sir; I did not.

Q. Did you know of Mr. Beardall making a survey of this grant?

A. I saw Mr. Beardall on the east line of the grant, and he was re-tracing old lines.

Q. About what time was that?

A. I suppose that was twelve or fifteen years ago—I couldn't say, fifteen years ago, or maybe more, a little more possibly; fifteen or twenty.

Q. Twelve years ago would be 1890?

A. It has been something over fifteen years.

Q. How long did you say you had known the grant?

A. I was on the grant—the first time I was on the grant was in January, 1871.

Q. Do you know Mr. Frappord?

Mr. Cooper:

We object to that as not in cross.

A. I do not.

Q. Do you know of any survey of this grant having been made prior to the one made by Beardall?

Mr. Cooper:

We object to that question as not in cross-examination.

A. It had been surveyed before Beardall went around the line.

794 Well, how long prior to the time Beardali went around the line had it been surveyed?

A. Why, I had seen the lines at different points before he ever saw the grant.

Q. Freshly marked lines?

A. No, they were not freshly marked. I don't remember; while there might have been some fresh marks, the old original marked line was there.

Q. You saw those before Beardall made any survey?

A. I did.

Q. Can you say of your own knowledge that this grant line had never been surveyed except by the United States surveyors in 1851, prior to the time Beardall surveyed it?

Mr. Cooper:

We object to that question on the ground that it is obviously impossible for the witness to say whether the grant was surveyed or not at any other time.

A. Why, I can't say. While there had been no evidence of a survey there may have been a dozen around on the old original line.

Q. Re-marking the line?

A. They may have re-marked.

Q. Then you have found no evidence on the ground that the old line has been re-marked at places?

A. Yes, I find some fresher blazes, but they are fresh. I know they are not the original blazes. I saw some new blazes right along on the old blazed line.

Q. About how old are those? How much difference does there seem to be in the ages of the two sets of blazes?

A. Why, there are some there that are only two or three years old now.

Q. Have they turpentined up to the blazed line of the grant, which you adopted as the south line?

A. They turpentined through acrossed the south line of the grant a few years ago.

795 Q. Were you present at the testimony given by Mr. McCollom in this case?

Mr. Cooper:

We object to that as not in cross.

A. I was not.

Q. You stated that the blazed line had been considered south boundary line of the grant, is it not a fact that it is well known that there were two corners that have been recognized as the southwest corner of the grant?

A. Not to my knowledge did I ever know of it.

Q. You never have known of any other corner as being recognized as the southwest corner of the grant?

A. I never have.

Q. Did you ever know of any other corner about sixty yards from the post which you located as the southwest corner of the grant?

A. Sixty yards what direction?

Q. Northward?

A. No, only at nine chains and fifty-seven links that is the only one I know of, that is the crossing of the north line of section twenty.

Q. Then forty chains and fifty links north of the southwest corner which you adopted there is no other corner?

A. Not that I know of: nine chains and fifty-seven links.

Q. Then you ever [never] have heard during the trial of this case or previously, that there was another corner recog-

nized as the southwest corner of the grant besides the one which you located?

Mr. Cooper:

We object to that question on the ground that it does not state who recognized it, and it is not in cross, and the witness has answered it at least three times.

A. I never have.

796 Q. You stated in your direct testimony that you located the blazed line nine chains and fifty-seven links south of the north line of section twenty according to the field notes, which you used in the survey, whereabouts in those field notes is there the evidence to locate that south line of the grant that distance south of the section line?

Mr. Cooper:

Mr. Owens, you can take the field notes and examine them any time you wish to refer to them.

A. The field notes say we should find that corner at five chains and thirty-five links, but there is no corner there, we could not find that there ever had been one established from the line, thence south nine chains fifty-seven links, at which point we found an old established post and a true bearing for it, the field notes only give one bearing for that corner, and we find that bearing today, of that evidence.

Q. And that is the evidence given in the field notes upon which you located the south line of the grant?

Mr. Cooper:

We object to that question as assuming facts—trying to put into the mouth of the witness facts he has not stated, on the ground that the witness has stated over and over the numerous reasons for his conclusions.

A. We found this old line and the only line running east from this corner, this point to this true bearing. I found the necessary monuments and pond, and the next one, spring run, goes to prove that the notes vary.

Q. Are incorrect, prove that the field notes are incorrect?

A. Statements they made in the chaining are incorrect.
Q. What season of the year is the rainy season in Florida?
A. Why, we consider June and July rainy season.
Q. Is it wet or dry in the woods at present?
A. It is a little dry.
Q. It is a little dry?
A. Not extremely.
797 Q. Have you noticed any statements in the newspapers at present in regard to the long drouth?

Mr. Cooper:
We object to that on the ground that the newspaper states do not enter into this case in any way and it is not in cross-examination, and he is questioning him on matters that are not pertinent or material, and there is no source of those statements shown or proven.

A. I have not, sir.
Q. Do you state that it is only a little dry at present?
A. The water courses are not extremely dry, not extremely so.
Q. How are the ponds?
A. The ponds, some of them, are not extremely low; none of them that I know of are extremely low.
Q. How long is it since it has rained?
A. Why, it rained last week.
Q. How much did it rain—how long since it had rained prior to the last of February?
A. In January, some time.

Mr. Cooper:
We object to that examination on the ground it is assuming facts not proven; it is not in cross-examination.

Q. You stated that the blazed line adopted by you as the south line of the grant has been considered as the south boundary line of the grant, by whom has it been considered as the south boundary line?
A. By every one I have know coming in contact with it in the years that I have known it.
Q. Have you ever had the plat of township nineteen, range

twenty-eight south in your possession prior to the survey made by you?

A. Yes.

Q. That plat show the measurement of the lines of the Rodriguez grant?

798 Mr. Cooper:

We object to that on the ground that the map is the best evidence of what it shows.

Q. Well, I will put it in this way: The map filed in evidence shows the measurement of the Rodriguez grant and says that the south line of that grant is run five chains and thirty-five links south of the north line of section twenty, do you testify that this plate and the measurement given on it was ignored by everybody when you say that the blazed line was recognized as the south line of the grant?

Mr. Cooper:

We object to that question, that it assumes that the map is incorrect when it is only that the figures on the map are incorrect.

Q. How do those who recognize the south line of the grant as the blazed line if they are contiguous owners determine the area of the land in fractional sections twenty-one and twenty-two?

Mr. Cooper:

We object to that question on the ground that there is no evidence that anyone ever attempted to determine the area or had any reason to determine the area or had to determine the area.

A. I don't know of any individual undertaking to determine it.

Q. Are the lands in the north half of sections twenty-one and twenty-two United States lands still?

Mr. Cooper:

We object to that question on the ground that it seeks to

elicit evidence which is not the best evidence, and there is no foundation laid.

A. I couldn't say whether there is any United States lands.

Q. Have the lands in the north half of sections twenty-one and twenty-two been in the possession of private individuals?

A. Some of them has.

Q. Have those persons used the timber for turpentine purposes?

A. South of the grant?

Q. In the north half of section, fractional section twenty-one and twenty-two?

799 A. Yes, north part of fractional section twenty-one and twenty-two I am not so sure; I think they have in part of the north half of twenty-two.

Q. You stated in your direct examination that the hacks found on the line of section twenty you deemed to be the same age as the blazes found on the west line of the Rodriguez grant of the south line of the Rodriguez grant?

A. The west line of the Rodriguez grant and the south line.

Q. The blazes on each of the two lines of the grant were about the same age as the hacks made in the trees on the line of section twenty?

A. They appeared to be very nearly the same age.

Q. How do you determine the relative age of hacks and blazes?

A. Well, I determine largely from following the old government marks and cutting them out, coming in contact with them and my notes telling the time the survey was made, and the corresponding appearances.

Q. About how close can you approximate the relative age of hacks and blazes that are over thirty years old?

A. Well, by cutting them out, you can feel quite sure.

Q. Did you cut out on this line any of the hacks on section twenty, or any of the blazes on the south line of the Rodriguez grant?

A. No, not on this survey.

Q. Yet you say you could have determined closely the relative age of the blaze or the hack if you had done so?

A. Yes, we consider we can.

Q. And did you measure the west line of the Rodriguez grant, beginning at any point indicated on the field notes and following the distance named in the field notes, to
800 locate the southwest corner of it?

A. After following the south line of the grant to the corner, Mr. Howard and my son chained north nine chains and fifty-seven links before we came to the intersection of the north line of section twenty.

Q. Now, then, you admit as the true and correct location of the northwest corner of section twenty-one and the northeast corner of section twenty, did you verify that location and the distance given on the field notes as the distance of the west line of the Rodriguez grant by going to the northwest corner of the Rodriguez grant and measuring down?

A. Didn't measure down.

Q. Is it not a fact that you could have absolutely determined the true southwest corner of the Rodriguez grant by locating the true north line of the grant and measuring down the west line the distance which the field notes indicate?

A. No, you couldn't for a certainty, no.

Q. Why could you not?

A. The field notes may not have proven the measurement, may have varied.

Q. But if the field notes were used by you to designate the natural objects to locate that on the south line of the grant and reject the measurement given on the field notes because those natural objects did not conform to what was said in the field notes, why didn't you test it by running the west line of the grant to see whether the natural objects mentioned in the field notes there would compare on the ground with facts given in the field notes?

A. Well, it might have been proven if I measured some on the west line, I haven't got my notes.

801 Q. Is it not a fact that when you found the blazed line where you had found it, and found a cabin sixty-three feet north of it, that was all you wanted to find.

A. I was wanting to find the grant line in the first place, which we did; we found the grant line and then measured from the grant line and found the cabin to be sixty-three feet north.

Q. If you wanted to find the true grant line in the blazed

line through the woods, why didn't you begin at the northwest corner of the grant and measure down?

A. We was not after the northwest corner, we were after the south line of the grant, was the particular line in question.

Q. You stated in answer to my question that you located this southwest corner by the field notes because you found at the southwest corner a bearing marks given in the field notes.

Mr. Cooper:

I object to that statement on the ground that it is not a correct statement.

A. We did find the true bearing to the southwest corner of the grant.

Q. You did find it?

A. The field notes take to be a pine, the pine is gone, but the hole is there, a very large pine.

Q. Is that the only hole that is burned out in that vicinity?

A. Oh, no; I didn't look for any others.

Mr. Jones:

Q. What distance was that, the distance laid down on the field notes?

A. No, the field notes said fifty degrees east, sixty; of course I or any surveyor would take it for granted it was sixty links, the distance was sixty feet.

Q. Mr. Owens, speaking of going east on that line and coming in contact with the pond, what was the distance across that pond?

802 A. We didn't measure it.

Q. What is the estimated distance across that pond, not referring to the notes, but what do you estimate the distance across that pond?

Mr. Cooper:

We object to that question on the ground there is no evidence that it was ever estimated by the witness; it is not in cross.

A. Five or six chains, I guess.

Q. Is it not true that that pond goes through the northeast north of where the blazed line is?

A. North, yes; north forty-five east, yes.

Q. What is the nature of the ground at the south end of that pond?

A. It is pine land.

Q. What is the nature of the ground at the north end of that pond?

A. Why, some of it is scrub, most of it is scrub.

Q. Is it as high as it is at the south end?

A. I don't think it is.

Q. Don't you know for a fact it slopes off that way running north and becomes very flat?

A. Some of it I know is low; the whole north side is high rolling pine, south side is some lower.

Q. Don't you know as a fact that the evidence of an ancient pond north of that particular line that runs toward the northeast that trends toward the northeast?

A. The pond is only about in there (indicating) six chains in extent running northeast, circled by pine woods.

Q. You don't remember then, do you?

A. No, it might be flat and grassy, have a pond appearance.

Q. Is not there quite a chain of little ponds just in that vicinity?

A. This is not connected with any other pond.

803 Q. But is there not some other little flat ponds just near there in the same trend with which this pond runs?

A. No, sir; I think not; not that I know of.

(That's all.)

Re-Direct Examination.

Mr. Cooper:

Q. Mr. Owens, what was your uncle's calling, do you recollect? You say you studied under your uncle?

A. He was surveying a good deal—had for years.

Q. Did he ever occupy any official position as a surveyor, if you recollect?

A. I think, sir, he was county surveyor at one time.

Q. Mr. Owens, you have stated that on this blazed line that you found, you did not find the government post at the intersection of mile and half mile lines, section and half section lines?

A. No, not on the south line of the grant.

Q. In making your examination between that blazed line and the north line of twenty-one, did you find any posts that would indicate that there were section lines, crossing a line further north? You have stated in your testimony that you examined between the blazed line and the north line of section twenty-one considerable distance on either side to ascertain whether there was any blazed line or any other stakes, will you state whether you found any stakes anywhere in that search indicating that there were any other lines intersecting there?

A. I did not.

Q. Did you find any blazed line between that blazed line you have testified about and the north boundary line of section twenty-one with stakes in it?

A. No, sir.

Q. You found no line at all?

804 A. I found no line at all.

Q. No stakes at all?

A. No stakes at all.

Q. Did you see the west line of section twenty-one, do you recollect?

A. Yes, as far down as the grant line from the northwest corner of twenty-one.

Q. Was that line dim or distinct?

A. It is distinct.

Q. Do they appear to be old lines or new lines?

A. Old line.

Q. How do they compare with the north line of twenty that you have testified about?

A. It compared all right; the measurement was the same from the grant corner to the crossing of that west line of twenty-one.

Q. How did the marks compare?

A. Favorably; appeared to be about the same as the other section line.

Q. When you testified before in this case, with reference to the distance between the section line and the boundary line

of the grant, did you testify from actual measurement or from an estimate and guess?

A. From estimate, and the north line was governed mostly by the north line, it seems to be about seventy yards.

Q. Had you measured it?

A. No, I had not measured it.

Q. That was just an estimate of yours?

A. No, I had not measured it.

Q. Mr. Owens, was the fact that the line touched the pond at the right place, was that fact, or within ninety-one chains I believe it was, of where the field notes gave the distance, was that fact alone, or was it any other one fact sufficient in your mind to convince you that this was the correct line?

A. That, with other facts, was.

805 Q. Then no one of those facts was the only check that you had on the notes?

A. By no means.

Q. Mr. Owens, will you state whether or not Mr. Howard and Mr. Morehead went there and made that survey merely to follow you in your conclusions and directions or whether they went there and made a genuine survey of that line?

A. They were not under my directions; they were trying to make, so far as I could see, a genuine survey from my observation and knowledge.

Q. They were not simply going where you were and taking your instructions and directions?

A. No, they were not.

Q. Mr. Owens, if the south line of the boundary of the grant was five chains and thirty-five links south of the north line of section twenty-one, would that grant line cross the east section line of twenty-one at the edge of the sink where the spring is?

A. It would not.

Q. Is there any point north of the point where this blazed line crosses the east line of twenty-one where it would cross on the edge or in the edge of that bank, supposing that line were removed further north?

A. If it was moved part of a chain north it would not have very much effect, but if it was moved even two chains north it would make a decided change, would not cross on the bank, and would make a decided change in the distance.

Q. Mr. Owens, have you ever known a drier season than

when you made this survey on that grant, have you ever known when the woods were drier than then?

A. Yes, I have.

806 Q. Will you state in your experience whether or not during the season which you have designated as the rainy season it is always rainy or always very rainy, or whether one rainy season differs from another in that respect?

A. It does not hold good invariably, it is not always a rainy season.

Q. Mr. Owens, suppose you had gone, as counsel for complainant has suggested, to the northwest corner of the grant and measured down the distance given by the field notes and located the southwest corner of the grant according to those distances and ran your boundary line and that boundary line came five chains and thirty-five links south of the north line of twenty-one, as the field notes give the distance, would not that line still fail to correspond with the natural objects?

A. It would.

Q. Then if you had measured that west—

Mr. Dewhurst:

Wait a minute; what natural objects?

Mr. Cooper:

The natural objects mentioned in the field notes, and take the witnesses as testified to as checks, then, if you had measured the west boundary line and found the distance as given by the field notes, that distance came to that blazed line, then [the] line then run would not have corresponded with the natural objects you have mentioned?

A. No, it wouldn't have corresponded with the natural objects.

Q. Did you have any reason to believe, Mr. Owens, that the dimensions given as to the west boundary line would be any more correct than the dimensions given as to the south boundary?

A. No.

(That's all.)

Mr. Haskell:

Q. Are you prepared to state, Mr. Owens, from your

knowledge of the natural objects, blazed line and others, connected with the south line of this grant, that the line you call the blazed line is the actual south line of the grant
807 as surveyed by the government?

A. Yes, I am thoroughly satisfied.

Q. How far east from the east line of section twenty-one on this blazed line did you survey on this survey that you are testifying to?

A. We didn't survey east at all, only to two blazed trees about five—somewheres between five and ten chains east of the east line of twenty-one.

Q. Do you know of your own knowledge whether this blazed line continued on that line to the southeast corner or not?

A. I never have followed it all the way through to the southeast corner; I have been on it at different points, but I have not continued it.

Q. Whether or not you have been at the southeast corner?

A. Yes, I have.

Q. Have you seen the southeast corner post?

A. I think the southeast corner post is gone; I think it is down, I think it was down; I have not been to that corner for several years, four or five years.

Q. You know where the northeast corner is of the grant?

A. Yes, that is standing.

Q. And you know where the northwest corner is?

A. Yes.

Q. Have you been along the whole line of the north line of this grant as blazed?

A. Yes, sir; it is all blazed, all the way through.

Q. Is it clearly blazed, and blazed in the same manner that the line you found at the south?

A. Apparently in the same manner and the same time.

(That's all.)

808 Re-Cross-Examination.

Mr. Dewhurst:

Q. How much of the south line of the grant runs through a swamp?

A. Why, there must be two miles of it, more than that; well there is over two miles in the swamp, some swamp and some hammock.

Q. Is it not nearly three miles of swamp?

A. Well, it may be as near three miles as it is two; there is over two miles of it.

Q. How easy or difficult would it be to survey a line through that swamp?

A. Why, it is more difficult than pine woods.

Q. How much more difficult?

A. Well, it would be ten times more difficult I would suppose.

Q. Do you know of anybody that has ever followed the south line of the grant east of section twenty-two?

A. Why, not of my certain knowledge. I have been on the line, know there is a line there that I have picked up from other points, checked up from other points. I have never followed it all the way through.

Q. Did you check it up in the swamp?

A. Checked it up in the swamp.

Q. How often does the line appear marked in the swamp?

A. Why, it is marked wherever there is timber.

Q. What blazes have you located for a line to find it?

A. In the northern part of section twenty-four, and northeastern part of section twenty-three, in fact I might say all of twenty-three at different times.

Q. When were you at those points, what year?

A. It has been about two months ago, I was on the line, on the northern part of section twenty-four.

Q. Was that east of where it leaves the swamp?

A. That was west of where it leaves the swamp.

809 Q. West of where it leaves the swamp, it comes out of the swamp the southeast corner is in the swamp, but on the southeast corner is open pine woods; it was west of that open pine woods.

Mr. Jones:

You mean where the road runs in there?

A. West of that; west of the road; the road runs across the grant there.

Q. You stated on your re-direct examination that Mr. Howard and Mr. Morehead located the south line of the grant

at the blazed line without your informing them that that was the line?

A. I said that they certainly did.

Q. Is it a fact that they placed the south line of the grant at the same place which you had determined more than twenty years ago was the south line?

A. It is a fact.

Q. And that placed the cabin to the north of the line that you had determined was the south line of the grant when the cabin was built?

A. Why, I have always considered that the cabin was north of the grant line, yes.

(That's all.)

(Witness excused.)

Mr. Dewhurst:

Now, we move to strike all the testimony of Mr. Owens on the ground that it is contradictory to the admissions on the record and that it is contradictory of his conclusions to the documentary evidence on which he alleges the same to be based, and also that it is contradictory to the testimony which Mr. Owens has already given in the case.

Thereupon, the defendant, to further maintain the issues upon its part, produced and caused to be sworn as a witness one AVERY OWENS, who testified as follows:

810 Direct Examination.

Mr. Cooper:

Q. Mr. Owens, will you state whether or not you took any part with Mr. Howard, Mr. L. J. Owens and Mr. Morehead recently making a survey along the south line of the Teresa Rodriguez Grant on the east line of section twenty-one?

A. Yes, sir; I was with them on that survey.

Q. What part did you take in that survey?

A. I was chainman.

Q. Have you had any experience before this as a chainman?

A. Yes, sir; I had about four years experience.

Q. Did you use a tape in doing this chaining?

A. Yes, sir; steel tape.

Q. Do you know whether the chaining and measurements made by you with that chaining were conscientiously and correctly done?

A. They were, yes, sir.

Q. From your four years' experience, do you consider that that chaining was properly and correctly done?

A. Yes, sir; I do.

Q. And that the measurements given by that chaining were correct?

A. Yes, sir.

Q. Did you do all the chaining with Mr. Howard that was done on this survey?

A. Yes, sir; I did.

(That's all.)

Cross-Examination.

Mr. Dewhurst:

Q. Were you sworn before you went into the survey?

A. No, sir.

811 (That's all.)

(Witness excused.)

Counsel for complainants agree that if Frederick H. Rand were called as a witness in this case that he would testify as is set forth in the affidavit which has been signed and sworn to by him on the 13th day of March, 1911, said admission being made with the reservation of the right of counsel to make such exceptions as they may deem proper to the competency of said evidence if given by the witness before the Master, and such other objections thereto as they may be advised.

Counsel for the complainants reserve the right to introduce in evidence other copies of certified copies of the patents to the heirs of Drawdy and to —— Matlock covering the lands in the north half of section twenty-one, township nineteen, south of range twenty-eight, east.

Counsel for complainants also reserve the right to put in

such rebuttal testimony to the hearing upon this date and upon the day previous, as they may be advised.

Thereupon the hearing was adjourned to be resumed at the convenience of the parties.

812 Marcos et al
vs.
Wilson Cypress Co.

Hearing of the above entitled cause resumed this Tuesday, April 11th, 1911, at Palatka, Putnam County, Florida, pursuant to agreement of the parties. Present: J. H. Jones and W. W. Dewhurst, Esqrs., representing the complainants; Charles P. Cooper, Esq., representing the defendant. Testimony taken before Raleigh C. Dowling, notary public. Thereupon the following proceedings were had:

Thereupon the complainants to further maintain the issues upon their part produced and caused to be sworn as a witness one W. A. BEASLY, who testified as follows:

Direct Examination.

Mr. Jones:

Q. What is your name?

A. W. A. Beasly.

Q. Where do you live, Mr. Beasly?

A. Orlando, Florida.

Q. I believe you have been qualified as an expert surveyor at a previous time in this proceeding?

A. I presume so, I think I was, at the other hearing. I am not an official surveyor in the state, however.

Q. Please state, Mr. Beasly, if you have recently visited the ground in Lake County, Florida, known as the Theresa Rodriguez grant, the same ground in regard to which you have previously testified?

A. I have.

Q. Please state if you examined any line of that grant, if so, what lines; I refer to lines actually blazed upon trees?

A. I examined the portion of the south line—

813 Q. And actually marked by corner posts usually used to designate public surveys?

A. I examined the lines of the grant beginning on the west line where it crosses the north line of section twenty, thence southward what was given in the field notes as the right distance to the grant corner, thence eastward about one and a quarter miles to a swamp, that is on the south line.

Q. What did you find along that line?

A. I found various blazes and marks on trees such as are used to identify surveyor's lines. I found a lake such as is called for in the field notes.

Q. Lake or pond?

A. Well, it is a shallow lake or grass pond at about the proper distance on the line, and of the proper width.

Q. Please describe that pond?

A. Wait a minute, I have not finished my answer. I entered the swamp at the proper distance from the southwest corner of the grant, as mentioned in the field notes.

Q. Please describe that pond, setting out what places the line crosses the same.

A. It is a shallow, almost dry at present, pond, grown up in grass and weeds, and begins at I think fifty-one chains east of the southwest corner of the grant, and is about six chains wide east and west.

Q. That six chains, does it extend entirely over water or not?

A. Partly over the water.

Q. Did you find any blazes beyond the east line of section twenty-one?

A. Yes, sir.

814 Q. Mr. Beasly, please state if as a surveyor, you were thoroughly satisfied or not as to the location of this line which you describe as the south line of the grant?

A. I am thoroughly satisfied that I located the southern boundary of the grant.

Q. Please state whether or not the line which you found defined upon the ground there, confirms with the location as read in the field notes of the United States Government.

A. It does.

Q. At what distance below the north line of section twenty-one is the line blazed upon the ground?

A. Five chains and thirty-five links south of the section line of section twenty-one.

Q. From the northwest corner of section twenty-one, township nineteen south range twenty-eight, east, and is the northeast corner of section twenty-one, township nineteen range twenty-eight, east, in situ?

A. Yes, sir.

Q. How are they marked on the ground?

A. Wooden posts noted by witness trees at one corner, and by natural water courses at the other corner.

Q. The northeast corner of twenty-one, how is that marked, Mr. Beasly?

A. By natural water courses and the posts.

Q. The northeast corner of twenty-one?

A. The northeast corner of section twenty-one is marked by a post at certain distances from the Drawdy Spring and from the swamp.

Q. Please state whether the testimony you are giving now is based upon a survey made subsequent to your former testimony?

815 A. Yes, sir.

Q. Does or does not the south line of the grant as established in your testimony run north or south of this cabin on the northeast quarter of fractional section twenty-one?

A. The grant line runs north of it.

Q. Please describe that cabin, giving any mark of identification about the same if any?

A. It is a small wooden house, about ten feet by twelve feet in dimensions, one story high, one door and one window, a notice is tacked on the door warning trespassers to keep away, signed by the Wilson Cypress Company.

Q. Is that the same cabin mentioned in your previous testimony?

A. Yes, sir.

Q. Please state whether there is any other cabin in that vicinity or not?

A. There is no other cabin anywhere near to this line.

Q. What is the condition of the post at the northwest corner of twenty-one as to its appearance?

A. The post is sound, in good condition, except that it is much worn and weather beaten.

Q. Are you familiar with the government posts used for the marking of section corners?

A. Yes, sir.

Q. Please state whether this post has the appearance of being a true government post, and state as to its appearance, as to age?

A. It appears to be a post put down by government surveyors; the age might indicate that it has been there a number of years, to have been the original post.

Q. Has it any section marks on it?

A. It has.

816 Q. Do you remember which sides that appeared on, or any description you could give?

A. Partly legible on three sides.

Q. On what side are they not legible?

A. On the southwest side.

Q. Can you give what marks were legible on those sides of the post?

A. The "S" is plainly legible, portion of the "2" and portion of the "1" on the southeast side. The "S" is plainly legible, portion of the "1" and portion of the "6" on the northeast side, and the "S" and portion of the "1" is legible as near as I remember is legible on the northwest side. And on the southwest side it is so weather worn that it is illegible.

Q. Please examine that photograph and state whether that is a photograph of that post?

A. I couldn't state from the photograph, sir.

Q. Please state whether you examined the post nine chains and fifty-eight links south of the intersection of the west grant line with the north line of section twenty, nineteen, twenty, eight?

Mr. Cooper:

We object to that question as leading.

A. I saw a post in that vicinity.

Q. Please state whether you established the point at which the north section line of twenty crosses the grant line or not?

A. I did.

Q. State whether you examined nine chains and fifty-eight links south from that point?

Mr. Cooper:
We object to that as leading.

A. Yes, sir.

Q. What did you find at that point?

817 A. Found a post.

Q. Please state the size of that post, in relation to the other post?

A. Much larger and taller.

Q. Please state whether there were any marks on that post, and if so, what?

A. It was marked with the letters "X T R".

Q. Do I understand you to say "X T R" and not "X R"?

Mr. Cooper:
We object to leading the witness.

A. Marked "X T R".

Q. Please state whether those marks were distinct or indistinct?

A. Distinct.

Q. Could you approximate the distance at which they could be read with the naked eye?

Mr. Cooper:
We object to that question as immaterial and irrelevant; and not in rebuttal.

A. About thirty steps.

Q. Please state whether you read them at thirty steps or no?

Mr. Cooper:
Same objection.

A. Yes, sir; I did.

Q. Please state from your knowledge as a surveyor and from your familiarity with posts, whether or not that is an ancient post?

A. It was not marked with the tool used by the government surveyors, and had nothing to distinguish it as a government surveyor's monument.

Q. In regard to the age of that post, can you give your opinion upon that?

A. I don't think it has been there more than twenty years.

818 Q. On what do you base that opinion?

A. On the condition of the wood of the post.

Q. Go ahead describe the condition as near as you can, please, what you saw?

A. It appears sound both above and below the surface of the ground; it is not very much weather beaten.

Q. What was the appearance below the surface of the ground, and how do you know?

A. The appearance was but slightly decayed, showing the axe marks very plainly where it was sharpened.

Q. How did you get at that?

A. I raised it out of the hole it was in, and looked at the point, and put it back.

Q. About how far was it into the ground?

A. About twelve inches.

Q. Who was with you when you made the examination?

A. Mr. Ginn, W. A. Ginn, and his assistant, I don't remember his name.

Q. Do you recall seeing that post before?

A. Yes, sir.

Q. When?

A. Last October, 1910, the last day of October.

Q. When you made your first survey there, that you have testified to previously in this case?

A. Yes, sir.

Q. Is the appearance of that post the same now that it was at that time?

A. Identical.

Q. Can you identify that photograph?

A. I cannot.

Q. What marks did you find on that post?

819 Mr. Cooper:

We object to that question on the ground that the witness has fully testified on that point.

A. I testified to that already.

Q. Please state, Mr. Beasley, if you can identify that photograph as the photograph of that post?

A. Mr. Jones, I cannot be positive about that, it is not plain enough for me to be positive that it is the same post.

Q. Mr. Beasley, going back to the south line of the grant as surveyed, who was with you in that survey that you have just been testifying about at this hearing?

A. Do you mean the one that I made recently?

Q. Yes?

A. Mr. W. A. Ginn, and a nephew of his, I believe it is his nephew, or helper in any way, he had an assistant.

Q. Did you go east—

A. Wait a minute—and we had two colored men who assisted in cutting out the underbrush and obstructions on the line so that we could get a clear sight for our instrument.

Q. Did you have a full outfit then for making the survey?

A. We did.

Q. State whether or not you went into the swamp east of twenty-one, line twenty-one?

A. We did.

Q. State what you found there?

A. We found some blazes and axe marks on trees.

Q. Did they correspond with what they should be according to the United States Government field notes?

A. They did.

Q. How far did you go, and how many blazes and marks of the description you speak of did you find, that corresponded with the field notes?

820 A. You mean after we entered the swamp?

Q. Yes, sir; I mean east of the north and south line of twenty-one?

A. There are some five or six within a quarter of a mile eastward of the east line of section twenty-one.

Q. What was the nature of the country beyond that?

A. Very dense hammock.

Q. A mile and further west of the east line of twenty-one in regard to which you have been testifying, please state how many marks and blazes you found there, corresponding with the field notes of the United States survey?

A. Do you mean within the section twenty-one?

Q. Yes, sir?

A. Some ten or twelve.

Q. Were there other blazes through the woods or not?

A. Yes, sir.

Q. Were there many of them, and their character, please?

A. Very many, and the character of them was such as would lead me to believe that they were made for the purpose of marking out roads and tramways and various purposes, such as that, other than section lines or land lines.

Q. What was the relative appearance as to the age between those various random blazes you speak of, and the blazes you found along the line five chains and thirty-five links south of the north line of twenty-one?

A. We frequently found blazes at other parts of the land, which seemed equally as old as any of them we found anywhere on lines or otherwise.

Q. Were the marks along this south line of the grant, according to the field notes, ancient blazes or modern, old blazes or new blazes?

A. The blazes we noted were old blazes. There
821 were also some newer blazes.

Q. Did those old blazes conform with the field notes of the United States survey?

A. They did.

Q. Where the south line of this grant, according to the field notes crosses, the east line of twenty-one, please state the natural monuments at that place, in relation to the branch running from the Sulphur Springs which has been testified to in this case by yourself?

A. It does not correspond to the field notes.

Q. Please state what the difference is?

A. About one chain.

Q. Please state whether it was longer or shorter, which way?

A. Wait a minute—it is more than one chain. I got that wrong. It is hard to remember all those things accurately. This is more than one chain, I couldn't give you the exact distance, but it is more than one chain.

Q. You say it crosses the Sulphur Springs branch about one chain different from the field notes?

A. It is more than one chain, I dont' remember the exact distance.

Q. Is it further east or west?

A. The branch is further east than the field notes describe it to be.

Q. Are you familiar with another line there which has been claimed by the defendant to be the south line of the grant, where it crosses the Sulphur Springs?

Q. No, sir; I am not.

Q. Please state where you found the oldest blazes from appearances?

822 A. On the west line of the grant.

Q. How do the marks and blazes on this south line of the grant, according to the government field notes, compare with the blazes which you have just spoken of as to age?

A. In outward appearances there was no difference, but from chopping out some of them I found the section line blazes deeper in the wood than the grant line blazes.

Q. Please state, Mr. Beasly, in what direction running from that Sulphur Springs branch, which you have testified about, upon the east line of twenty-one, and what direction that line goes after it leaves the spring?

A. Do you mean the spring that is crossed by the line between sections twenty-one and twenty-two at seventy chains north of the section corner?

Q. Yes, sir.

A. The line goes northeast.

Q. Please state as near as you can, the degrees east of north?

A. It does not follow in a straight line, but curves, meanders slightly; I would say that its general course was somewhat less than forty-five degrees east of north.

Q. Mr. Beasly, as a surveyor, are you thoroughly satisfied that you found the true south line of the grant according to the government field notes?

A. Yes, sir.

(That's all.)

Mr. Cooper:

The defendants move to strike the entire testimony of the witness on the ground that his entire testimony refers to field notes, which have not been in any manner identified or pro-

duced, is based throughout on the conclusion of the
823 witness as to field notes; and also all testimony of the witness as the post testified about marked "XTR" because said post has not been identified as the post testified about by the witnesses for the defendant. Further because the witness throughout has given his opinion upon various matters without being qualified.

Cross-Examination.

Mr. Cooper:

Q. Mr. Beasly, you stated that you located the south line of the Teresa Rodriguez grant according to the distances given by the government field notes, please explain that statement in detail?

A. The field notes that were used by me, and that were certified as being the government field notes by the proper certificate customary to be attached or affixed to such field notes, described the south line of the grant as being located at a distance of five chains and thirty-five links south of the north line of section twenty-one, township and range as noted before. I also had field notes for the section lines and section corners of the said section twenty-one, and before attempting to locate the south boundary line of the grant I had fully satisfied myself as to the location of all four corners of the section, and had proven by the location of the various lines according to natural water courses and lakes and witness trees as described in the field notes of the original government survey of the sections. After doing that I measured the proper distance south from the north line of section twenty-one and proceeded to the location of the south line of the land grant known as the Teresa Rodriguez grant.

Q. Mr. Beasly, will you state who sent you to make this survey?

824 A. Mr. J. H. Jones of Orlando.

Q. Mr. Beasly, at the point five chains and thirty-five links south of the north line of section twenty-one, will you state whether you found any post which might be the southwest corner of the grant, at the distance given by the field notes?

A. I did not.

Q. Did you locate the southwest corner of the grant according to the field notes?

A. I did not by any apparent witness trees or markings, only by following the lines and measuring to the distance as set out in the field notes to make that a point.

Q. Mr. Beasly, from that point, which you ascertained to be the southwest corner of the grant in your opinion, did you measure the distance to the edge of the grass pond, about which you have testified?

A. I did.

Q. Did you find that distance to correspond with the field notes?

A. I did, yes sir, partly.

Q. What do you mean by partly?

A. Within a very few feet or links, perhaps eight or ten feet.

Q. Eight or ten feet?

A. Yes, sir.

Q. Did you measure the distance across that grass pond at that point?

A. Yes, sir.

Q. What was that distance?

A. The same as given in the field notes.

Q. Do you recollect what that distance was?

825 A. It was six chains.

Q. You were certain of that?

A. I feel reasonably certain of it, quoting from memory.

Q. Now, can you state the distance from the southwest corner of the grant to the lake from memory?

A. It was either fifty or fifty-one chains.

Q. Is that the distance called for by the field notes?

A. Yes, sir.

Q. You have stated, Mr. Beasly, that the line entered the swamp at the proper distance, what do you refer to by that?

A. The distance called for by the field notes.

Q. What is that distance?

A. Ninety-eight chains.

Q. You found that to be the exact distance?

A. As near as you could define the boundary line between the swamp and open country.

Q. How near did you come to that?

A. Well, perhaps the distance of twenty-five feet might intervene either way.

Q. When you say that that grass pond was six chains wide, was that what you said?

A. Yes, sir.

Q. You refer to the point where this line five chains and thirty-five links from the north line of section twenty-one touches that lake, is that the width you refer to?

A. Yes, sir.

Q. How far east did you go, Mr. Beasly?

A. Went about ten chains into the swamp perhaps; eight or ten chains, into the swamp.

Q. No further than that?

A. No further than that.

826 Q. Mr. Beasly, did you find that this line, 5.35, corresponded with the field notes with reference to the spring run mentioned in the field notes?

A. Not exactly.

Q. To what extent did it vary?

A. The spring run was too far east.

Q. How far?

A. I judge it was two or three chains too far east.

Q. You didn't measure it?

A. I measured it, but I don't remember; that is, I didn't keep the notes of that measurement, Mr. Cooper. Mr. Ginn kept the notes of that measurement, I didn't keep them.

Q. Did you see from the field notes that the intersection of the east line of section twenty-one with the south line of the boundary was in the edge of the spring branch?

A. It was in the edge of a dry branch, but not in the edge of the branch that flowed from the Sulphur Springs.

Q. The intersection which you established as the correct line was in the edge of a dry branch?

A. Dry run, yes, sir.

Q. Where did that run come from?

A. Come out of the swamp.

Q. Didn't come out of the spring?

A. No, sir.

Q. Mr. Beasly, did the field notes—I think you said that you established the intersection of the south line with the west line of twenty-one and the east line of twenty-one by natural

lines and certain distances, if I am incorrect, please correct me on that?

A. I established those points by measurements, from the corners on the north line of section twenty-one, as
827 given by the field notes of the original survey of the township.

Q. Did you find those distances exactly agreed?

A. I measured the correct distance from the corners.

Q. You didn't find any marks there?

A. I found no marks there.

Q. And when you found the correct distances from the northwest corner of twenty-one did you find bearing trees there?

A. No, sir.

Q. What did you find there, was there anything besides the distance given in the field notes which you found?

A. I found nothing of the location of that corner except the measurement from the section corner.

Q. Mr. Beasly, what distance did you find that point of intersection of the west line of twenty-one from that section corner?

A. Five chains and thirty-five links south of the—

Q. You say you located the other intersection of the grant line with the east line of twenty-one from bearing trees?

A. From a post which was put down at the edge of the swamp seventy-nine chains and eighty-six links north of the southeast corner of section twenty-one.

Q. You located it from that post?

A. I located that post from the other post, and by the natural witness trees, in that vicinity.

Q. What were those witness trees to that post?

A. There were no witness trees for the post on the north, no witness trees for the post at the northeast corner of section twenty-one mentioned in the field notes, that is given as being
in the edge of the hammock, but I found the line as
828 marked all the way through there and found the intersection of the line through the spring proper, and not through the spring branch.

Q. Through what spring?

A. The White Sulphur Spring, mentioned in the field notes.

Q. What distance did you find that White Sulphur Spring from the northeast corner of twenty-one?

A. I will have to make a mental calculation, it was seventy chains north of the southeast corner of twenty-one by my measurement; the field notes give it sixty-nine; there was a discrepancy between—

Q. Seventy chains to the spring from the southeast corner of twenty-one?

A. Yes, sir.

Q. And is that where you found the intersection of the south grant line at that spring?

A. No, sir.

Q. I thought you said it went through the spring?

A. The east line of the section twenty-one goes through the spring—

Q. I am referring now to—

A. The south line of the grant is at 74.65, I believe, or something like that.

Mr. Dewhurst:

Q. From what?

A. From the southeast corner of section twenty-one.

Mr. Cooper:

Q. Now what natural objects confirm from your opinion as to that intersection of that east line of twenty-one with the south boundary line?

A. The fact that I found the corner post at the northeast corner of the section in position that I am positive is the right post, that is I am positive that that is the north-
829 east corner of section twenty-one, and I measured five chains and thirty-five links south from that post as called for in the field notes and established the intersection of the south grant line with the east line of section twenty-one.

Q. Then your establishment of that point was simply by the distances from the northeast corner of twenty-one?

A. At that point, it was, yes, sir.

Q. Now, Mr. Beasly, is that distance exactly five chains and thirty-five links?

A. Yes, sir.

Q. That should be the distance exactly by the field notes?

A. Yes, sir; it should be.

Q. What distance did you find continuing in a straight line east, continuing the line which you considered to be the south boundary line to the spring run, do you recollect?

A. I didn't keep the memorandum of that, Mr. Ginn kept that; I didn't keep the memorandum of that measurement.

Q. In referring to the northeast corner and the northwest corner of section twenty-one, I presume you are referring to the full section?

A. The full section, yes, sir.

Q. Not fractional section twenty-one?

A. Not fractional section twenty-one.

Q. Did you find any errors in any of the field notes, Mr. Beasly?

A. Yes, sir.

Q. What error did you find?

A. Some error in the measurement about one chain.

Q. That is all the errors that you found in the field notes?

A. One chain in distance, that is one chain in distance between the northeast corner and the southeast corner.

830 Q. Northeast corner and southeast corner of what?

A. Section twenty-one.

Q. Where did that discrepancy come in?

A. I couldn't tell you, it is in the whole line.

Q. You found a discrepancy?

A. Of one chain distance in the whole line, in the east line of section twenty-one.

Q. Then those section lines do not conform exactly to the government measurement?

A. No, sir; the entire distance of the west line of section twenty-one; about the same discrepancy on each side.

Q. Mr. Beasly, where has the most of your surveying been done, in what state?

A. Missouri, Kansas, Louisiana, Mississippi.

Q. Have you had experience before in surveying Spanish grants?

A. No, sir; except for one short distance on the east coast, I surveyed the east line, a part of the south and a part of the east line of a Spanish grant over there.

Q. Has your surveying been to any extent through a section where pine timber prevails to a considerable extent?

A. Yes, sir; in Louisiana and South Arkansas.

Q. Has there been anything involved in your surveying leading you to judge of blazes forty or fifty years old?

A. Frequently.

Q. Has it been your experience, Mr. Beasly, that a pitch pine post decays rapidly or not, rapidly or otherwise?

A. Pine posts usually last until destroyed by fire.

831 Q. Wasn't this a pitch pine post at the southwest corner of the grant, this post you have testified about as "XTR"?

A. It was.

Q. Did you raise any of the other posts, marked posts, to ascertain whether they were decayed under the ground?

A. One.

Q. Which one?

A. The one at the southeast corner of section twenty-one.

Q. Did you find that post decayed?

A. Yes, sir.

Q. What kind of post was that?

A. Pitch pine.

Q. Small post?

A. Small post, yes, sir.

Q. Mr. Beasly, will you state how many blazes in this line which you testified about as five and thirty-five south of the north line of twenty-one, how many blazes along that line you found, between the grass pond testified about, and the point which you considered as the southwest corner of the grant?

A. Six or seven.

Q. How many did you find east of the pond, between the pond and the east line of twenty-one?

A. Some five or six.

Q. You have stated, Mr. Beasly, that there were a great many old blazes through the woods, and you ran across blazes which were not so old, you stated the old blazes corresponded with the field notes, will you explain what you mean by that?

A. I think you misunderstood my answer.

Q. You recollect what you did state about that?

832 A. I said that there were plenty of old blazes all through the woods that appeared quite as old as the blazes on the section line, but their position would not indicate that they were intended for line blazes or surveyor's blazes.

Q. Mr. Beasly, don't you know as a matter of fact, that

the distance across the water in that grass pond, described at the present time, at the point where the line you claim as the south boundary line of the grant crosses it, is only two chains and twelve links?

Mr. Dewhurst:

We object to that question on the ground that there is nothing in the field notes offered in evidence which refers to water, and the question of where the water is would be a question which would have to be determined by the season in which the survey was made, if it appeared in the field notes, and there is no evidence that the season which Mr. Beasly visited the pond was at all similar to the season when the survey was made which the field notes mention.

A. I am not sure of the exact distance across the existing water in the pond; it is at present within the margins of the pond proper.

Q. What do you refer to as the margins, Mr. Beasly?

A. The pond has a well defined margin marked by a depression in the ground at the bank, bordered with palmetto.

Q. At what point did you make that measurement of that pond?

A. From the depression which I called the bank of the pond at the border of the palmetto.

Q. Is it from that point, that border, that you measured the point which you considered the southwest corner of the grant?

833 A. Yes, sir.

Q. What points at that pond did you measure the distance across as the width of that pond?

A. At the points where the line drawn five chains and thirty-five links south of the north line of section twenty-one would intersect the apparent border of the pond as marked by the depression of the land, and the border of the palmettos.

Q. Well, I refer now to the extreme points of the width which you considered the width of that pond, what were those two points, how far apart?

A. Six chains.

Q. Then what point on the east did you measure from, did you measure from that border that you refer to?

A. Yes, sir; the border is well defined on both sides, in fact all the way around the margin of the pond.

Q. Mr. Beasly, did you use a chain or a tape in making these measurements?

A. A steel tape marked with links.

Q. Mr. Beasly, from the point which you considered the east edge of the pond where the boundary line as you considered it crosses that pond, did you find the distance from that point to the east line of section twenty-one to conform exactly with the field notes?

A. Yes, sir.

Q. What was the distance, do you recollect?

A. The distance to the east line of section twenty-one would be the length of the north line of twenty-one with three chains and eighty links added.

Q. Well, I can calculate that, Mr. Beasly, but did you measure that distance?

A. I did.

834 Q. Do you recollect what you found that distance?

A. Mr. Ginn kept that measurement, that memorandum of that measurement, I haven't it with me, I didn't keep the memorandum of that point.

Q. Is Mr. Ginn here with the memoranda?

A. He will be.

Q. You say, Mr. Beasly, that you follow that line across a few chains east of the east line of twenty-one?

A. Yes, sir.

Q. That grass pond, Mr. Beasly, as I understand your testimony, is the only natural point wherein that line conforms with the field notes?

A. Also the intersection with the hammock.

Q. At what point?

A. Ninety-eight chains.

Q. From what?

A. From the southwest corner of the grant.

Q. What kind of hammock is that?

A. Palmetto.

Q. Is it not a fact, Mr. Beasly, that the edge of a hammock is a rather indefinite point in surveying?

A. Yes, sir; I so stated in my previous answer.

Q. Mr. Beasly, were you sent to survey this line five chains and thirty-five links south of the north line of twenty-one?

A. Yes, sir.

Q. About what age, Mr. Beasly, did you ascertain those blazes on that line which you claim as the south grant line, about what age did you judge those blazes to be?

A. About forty years.

Q. How did you judge that?

835 A. By counting the rings of growth in the tree where I chopped out the blazes, chopped into where the blaze was made.

Q. Mr. Beasly, is it not a fact that while you were making this recent survey of that grant that Mr. L. J. Owens had a conversation with you regarding this line you were running?

A. Yes, sir.

Q. Is it not a fact that you could not point out to Mr. Owen blazes of sufficient age to indicate that they were not original lines of this grant?

A. I don't remember Mr. Owens asking me to do that.

Q. Is it not a fact that you and Mr. Ginn admitted to Mr. Owens that the line you were running did not conform to the field notes excepting in distances?

A. I did not.

Q. Did Mr. Ginn in your presence?

A. No, sir.

Q. Mr. Beasly, when a line does not conform to the distances given in the government field notes, do you know as a surveyor whether it is customary in surveying to abandon those distances for a line conforming to natural objects and approximately correct in distance can be found?

Mr. Jones:

We object to that question on the ground that the sufficient foundation has not been laid to establish any such custom, and the question is not sufficient to determine the custom, and seeks to assume facts not proven, and it is immaterial and irrelevant, and it assumes that a line found as blazed upon trees has been so blazed by official surveyors, and that the posts, if any, which would correspond with the blazed line, have been placed in position by official surveyors, and that the original

836 posts have not been removed, properly removed.

A. The duties of a surveyor in re-establishing an original survey are to ascertain as far as practicable where the original lines and corners were located; whether it is necessary to make a different reading of the distance can only be ascertained by the work of the surveyor in the field.

Q. Mr. Beasly, did you make any effort to find a line approximately agreeing in distance, according to the field notes, which would conform in more respects with the natural objects mentioned in the field notes?

A. Yes, sir.

Q. What did you do in that direction?

A. I looked over the entire district and took account of every object by observation and measurement that might have any bearing on the location of these lines.

Q. Did you not find, then, from your investigation, that a line running east from the post which you have testified about, to the east line of section twenty-one, would have conformed more nearly to the field notes of the Rodriguez grant, from the fact that it touched the water of the grass pond, at the edge of the pond several chains more nearly correct according to the distance given in the field notes, starting from the corner post mentioned, and that the distance at that point of contact across that pond was, would be several chains more nearly correct according to the field notes of the Rodriguez grant, and that the distance from the east edge of that pond, at the point of intersection of the south line of the grant, as I am considering it now, to the east line of section twenty-one, would be more nearly on conformity with the
837 distance given in the field notes, and that the intersection of that line which I am describing, with the east line of section twenty-one, would be in the edge of the spring branch, by reason of the fact that it is in the edge of the bank of that branch, and that the distance from that intersection of the south line which I am describing, with the east line of twenty-one, to the spring run, would be several chains much more nearly correct according to the distance given in the field notes of the Rodriguez grant, on the line that I am describing east, and that in fact considering the distance measured on that line in connection with the natural objects, that that line would be very much nearer to distances and objects given by the field notes than the line which you have mentioned?

Mr. Dewhurst:

We object to that question on the ground that it is argumentative; that it assumes that the field notes are correct and attempts to disprove the survey by a surveyed line or marked or blazed line.

A. Mr. Owens indicated the point of intersection of his line, or I presume the line that you have reference to, with the west margin of the grass pond. According to our interpretation of the field notes his point of intersection would be four chains or further out of the way than the western margin of the pond. The point would not be wide enough east and west, by more than one chain, possibly two chains. The intersection of the grant line with the eastern margin of the pond would be about five chains out of the way. I am not familiar with the exact location of his intersection with the spring run, and could not say as to whether it would correspond to the field notes or not, but from the natural shape of the spring run, no line in that vicinity running east and
838 west will cross it twice; consequently that could not be correct.

Q. In that part of your answer relating to the spring run, you are referring, are you not, Mr. Beasly, to the creek or water course leaving the spring?

A. I am.

Q. Mr. Beasly, you knew that when you were there making this survey that there was a claim that some other line than the one which you were running was the correct line, the correct grant line?

A. Yes, sir.

Q. You did not survey that line?

A. I did not. The points on that line were indicated to me by Mr. Owens, who said that he had surveyed it.

(That's all).

Redirect Examination.

Mr. Jones:

Q. Did Mr. Owens indicate to you where the line he claimed crossed the east line of twenty-one?

A. I don't remember that he did.

Q. Didn't he set a post there?

A. He might have; he might have indicated it to Mr. Ginn in my absence, I don't remember of seeing the point.

Q. A line running there I believe you said, and crossing that Sulphur Springs branch would not cross it but one time, is that what you said, a line running east and west?

A. Between the swamp and the spring, will not cross the branch twice.

Q. Do you remember how many witness trees are called for at the southwest corner of the grant by the government field notes?

A. One.

839 Q. You spoke of the distance from the southeast corner of twenty-one to the south line of the grant, as being seventy-four chains and sixty-five links, is that the line that conforms to the government field notes and is that the line as marked on the ground which you have been testifying to in the first part of your examination?

A. Yes, sir.

Q. Then there is such a blazed line actually upon the ground?

A. Yes, sir.

Q. What is the apparent age of that blazed line?

A. It is about the oldest line or as old as anything there.

Q. And do I understand you to say that that line crosses the east line of twenty-one at five chains and thirty-five links south of the northeast corner of Section Twenty-one?

A. Yes.

Q. Where that line crosses the east line of twenty-one five chains and thirty-five links south of the section corner, northeast corner of twenty-one, do the blazes correspond with the line east and west with that point of intersection, do the blazes of that old line which you have just testified to, correspond east and west with that corner?

A. Yes, sir.

Q. You testified in regard to the margin of that grass pond crossed by the south line of the grant, please state if the season at which you examined it is the wet or dry season?

A. Dry.

840 Mr. Cooper:

We object to that question, on the ground that the witness is not qualified to testify to the seasons in Florida.

Q. What season did you examine it at, when did you examine it?

A. The last of March, 1911, about the last one or two days of March that I was over there.

Q. Is it wet or dry season?

A. It was the dry season.

Q. How dry, comparatively?

A. Why, I should say it was as dry as usual at the dry season in this state.

Q. Are the field notes which you testified to, the same field notes that were identified and filed in evidence at your former examination?

Mr. Cooper:

We object to that question, on the ground that what field notes he used is best proved by the field notes themselves, and the witness cannot prove the contents by his statement.

Q. I will ask you the question in this way: Are you referring to the government field notes which you used on your former examination?

Mr. Cooper:

We object to that question unless it is shown that the witness had those notes.

A. Yes, sir.

Q. You stated that you were sent to survey a line five chains and thirty-five links south of the north line of twenty-one, nineteen, twenty-eight, please state what your instructions were in addition to that?

A. To ascertain whether or not there was anything on that lin that would indicate to me that it had been surveyed at some former time by anybody intending to survey the line mentioned in those field notes as the south line of the Theresa Rodriguez Grant.

Q. And have you stated the results of your findings
841 in your testimony here, to-day?

A. I have.

Q. Please state whether or not you at some former time established the boundaries of the tract of land known as the Drawdy Homestead?

Mr. Cooper:

We object to that question, on the ground that it is immaterial and irrelevant, and being not a matter in issue.

Q. Adjoining the Theresa Rodriguez grant?

A. I have.

Q. Please state whether or not you established the northwest corner of the Drawdy homestead?

Mr. Cooper:

We object to that question, on the ground that no proper foundation has been laid for the testimony; it seeks the conclusion of the witness; it is immaterial and irrelevant and not involved in the issues in this cause.

A. I did.

Q. Did you set up any post or not?

Mr. Cooper:

Same objection.

A. I did.

Q. Please state where—please state the relative position of that post to the south line of the Rodriguez grant, as found by yourself as as testified, as the line five chains and thirty-five links south of the north line of twenty-one?

Mr. Cooper:

We object to that, on the grounds above mentioned.

842 A. It was practically on the line.

Q. How much did it vary?

A. A little less than six inches.

Q. At the time you established that corner, had you investigated the south line of the grant, five-thirty-five chains south of the north line of twenty-one?

Mr. Cooper:

We object to that question, on the ground stated above, that the testimony is incompetent?

A. I had not.

Q. What part of the Drawdy homestead did you establish, did you survey?

A. What do you mean by the Drawdy homestead?

Q. I mean the lands patented to the heirs of Z. C. Drawdy. (Reading): "The west half of the northwest quarter of Section Twenty-two, and the east half of the northeast quarter of Section Twenty-one in Township Nineteen, south of Range Twenty-eight of Tallahassee meridian in Florida, containing 1.38 acres and 4.100 of an acre," is that the Drawdy homestead whose northwest corner you established?

A. I established the post marking the northwest corner of a tract of land described as the fractional east half of the northeast quarter of Section Twenty-one, township and range above mentioned. I surveyed the south line, the east line and the north line of the said fractional tract of land. It was fractional by reason of the southern boundary of the Theresa Rodriguez grant as mentioned in the field notes and affidavits furnished me.

Mr. Cooper:

We move to strike the foregoing testimony, for the reasons that are stated in the last objection.

Q. So that the post then testified to as being within six inches of the south line of the Rodriguez grant is established from the government field notes by yourself?

843 Mr. Cooper:

Same objection, and the further objection that the question assumes facts not proven.

A. When in company with Mr. W. A. Ginn I went to survey the south boundary line of the Theresa Rodriguez grant through Section Twenty-one, we found out the proper distance on the south boundary of that grant line, the post as formerly stated by me for the northeast corner of the aforesaid Drawdy homestead within six inches of the proper place it should have been.

Q. Do you mean the east or the northeast?

A. Northwest corner.

Q. You want to correct your testimony making it northwest or northeast?

A. It should be northwest, if I said northeast.

Q. State, then, Mr. Beasly, whether these two surveys were separately and independently made or not?

A. They were made from opposite directions at different times, and wholly independent of any connection with each other.

Q. Did you intend to use the word "familiar" in your answer, you did use, when you said you were not familiar with the crossing of the south line of the grant as established by you with the spring run?

A. I was referring to the line that is described as the other survey and not ours. I am not familiar with the survey south of this one where it crosses the spring run.

(That's all).

Recross Examination.

Mr. Cooper:

Mr. Beasly, when did you make this Drawdy survey.

A. In the last few days of October, last, two or three days in the last of October, or perhaps the first day or two of November, 1910.

Q. For whom did you make this survey?

844 A. Mr. J. H. Jones.

Q. Was that in litigation?

A. I don't know; he told me that it was.

Q. You didn't give any testimony on that?

A. Yes, sir.

Q. You testified on that Drawdy litigation?

A. Yes, sir; later on I did.

Q. There was some boundary dispute then at that time?

A. I was not informed that there was at the time of the survey.

Q. But you testified in some legal proceedings in which that boundary was in question, the location of that boundary?

A. At the time I testified I was aware that there was litigation over the boundary; I was not aware at the time the survey was made.

Mr. Jones:

Q. You mean your testimony in this case?

A. Yes, sir; at the time I testified in this case.

Mr. Cooper:

Q. Do you mean you testified in some proceeding with reference to this other property?

A. No, sir; I did not.

Q. Did you plat that survey or make some kind of written report of that survey?

A. Yes, sir.

Q. Who did you give that to?

A. Mr. Jones, Mr. J. H. Jones.

Q. Mr. Beasly, did Mr. Jones go with you on this survey, this recent survey?

A. Yes, sir.

Q. For what purpose?

A. He didn't tell me.

845 Q. How long was he with you?

A. One day.

(That's all).

Redirect Examination.

Mr. Jones:

Q. How many days were you employed in it?

A. On the last survey?

Q. Yes, sir?

A. Three days.

(That's all).

(Witness excused).

(Signed) W. A. BEASLY.

Mr. Dewhurst:

We file these patents in evidence, patents of the Drawdy Homestead, and patent of the Mattock and Patent of the Cash's entry, all affecting the north line of the north part of fractional Section Twenty-one. Offered subject to objection to be interposed at some future time.

(Filed in evidence and marked Complainant's Exhibit No. ....)

846 Thereupon, the complainants to further maintain the issues upon their part, produced and caused to be sworn as a witness, one W. A. GINN, who testified as follows:

Direct Examination.

Mr. Jones:

Q. What is your name?

A. W. A. Ginn.

Q. What is your present residence?

A. Sanford, Florida.

Q. What is your occupation?

A. Civil engineer and surveyor.

Q. What experience have you had, Mr. Ginn, as a civil engineer?

A. Twenty-five years.

Q. In what states?

A. In Ohio, principally, and built railroads over several other states.

Q. Have you had any experience in Florida?

A. I have.

Q. How many years?

A. Three years and a half.

Q. Have you been used as an expert in testimony in the courts?

A. Yes, sir.

Q. Are you familiar with the running of land lines in Florida?

A. Yes, sir.

Q. Of United States surveys of Spanish grants?

A. Yes, sir.

Q. Have you recently surveyed a line, a portion of the boundary of the grant known as the Theresa Rodriguez grant, in Lake County, Florida?

A. I have.

847 Mr. Haskell:

We object to that question, on the ground that the witness is not properly qualified as an expert in the surveys of Florida lands.

Q. You say you have surveyed in Ohio?

A. Yes, sir.

Q. How many years?

A. About twenty years or twenty-two years.

Q. Please state whether the land descriptions in that state are by township, range and sections or not?

A. Township, section and range surveys, and military surveys.

Q. Please state what experience and work you have done in Florida, Mr. Ginn?

A. Establishing section lines, subdividing sections into lots, laying out railroad work, establishing corners contingent upon right of ways and work of that kind.

Q. That you have been called upon to do?

A. Civil engineering work and so on.

Q. Have you been called upon to establish old lines at any time?

A. I have.

Q. What portion of Florida have you operated in?

A. Principally in Orange County.

Q. Please state what portion of the line of this grant that you have recently looked into?

Mr. Haskell:

Same objection.

A. We defined the sections adjoining the southwest boundary of the Rodriguez grant.

Q. Do you remember what section that was?

A. Sections Sixteen, Seventeen, Twenty and Twenty-one and part of Twenty-two.

Q. Please state what you did to satisfy yourself
848 of the starting point in making your investigation there?

A. We determined the corner of Section Sixteen, Seventeen, Twenty and Twenty-one.

Q. What did you find there?

A. We found a post setting in the ground with the proper marks on that post, the numbers "sixteen" and "seventeen" on the north side were well defined, but almost eliminated by time, and on the south side they were entirely removed.

Q. Do you think that was the original post put there by the United States survey?

A. I do.

Q. Did you tie that post up with any line?

Mr. Haskell:

I object and move to strike the answer, on the ground it is merely the opinion of the witness.

A. We kept up by measuring up and taking the bearings with the Rodriguez grant line on the west and on the south.

Q. When you established that post, which direction did you then go?

A. We ran a preliminary survey on the south line of the Rodriguez grant.

Q. How many chains from that post south did you go?

A. Five chains and thirty-five links.

Q. What direction did you go from there?

A. Went in an easterly direction practically with the survey line.

Q. How far east did you go along that line?

A. We went about eighty-four chains with the transit line, and we ran a preliminary line from there about twenty-five chains.

Q. Please state, Mr. Ginn, whether or not you
849 found a well defined line five chains and thirty-five links south of the section line of the north line of Section Twenty one?

A. I did.

Mr. Haskell:

We object to that question as leading and suggestive.

Q. Where did you make your starting point for running that line?

A. Beginning on the west, west line of the survey as marked out on the field there by the witness trees, line trees, we began at the proper sections as designated by the measurment on the section line map and then ran eastward with the surveyed line.

Q. Did you run that line parallel to the north line of Section Twenty-one?

A. It has a bearing of about three minutes difference.
Q. Otherwise it was parallel?
A. Yes, sir.
Q. Which way is that three minutes?
A. The three minutes bearing is northerly.

Mr. Dewhurst:

In running it now, on the east and west lines of Section Twenty-one?

A. Yes, sir.

Q. Please state whether you visited the northeast corner of twenty-one?

A. I did.

Q. What did you find there?

A. I found a government monument, a stake.

Q. You say you found a government monument stake there?

A. A post; yes, sir.

Q. Were there any trees around there?

A. The witness trees; yes, sir.

850 Q. Were you satisfied you found the true northeast corner of twenty-one as surveyed by the government?

A. I am.

Q. Did the section line extend east and west from that monument, government post?

A. Yes, sir.

Q. From that post to establish the south line of the Rodriguez grant, how far south did you run on the east line of Section Twenty-one?

A. Five chains and I think it is twenty-eight or thirty links, whatever the field notes called for, I don't remember.

Q. Then, in what direction did you go from that point on the east line of Section Twenty-one?

A. Southward with the section line.

Q. For what purpose was that?

A. For determining the point of intersection of the Rodriguez grant line where it should cross the section line.

Q. And I understood you to say you went southward five chains and twenty-eight or thirty links?

A. Yes, sir.

Q. And then when you got to that point, in which direction did you go?

A. Then, we retraced out—we ran on southward to the line that we were investigating, ran as far south as nine chains and ten links, where they had set a post.

Q. Where was that post setting, was it setting in the edge of the branch or not?

A. It was setting up on the elevated land.

Q. You say you found a post setting up on the high land there?

A. Yes, sir.

Q. How was that post marked?

851 A. It was just a new stake I found there, marked "southeast corner of grant."

Q. Was it dated?

A. Yes, sir.

Q. What date was on it?

A. March 28th, I think. If I remember it was March 28th, but I am not positive about it; it was just about the time we were there, two or three days before that.

Q. What year?

A. 1911.

Q. And that stake had the appearance of being freshly set?

A. Yes, sir.

Q. Was there any old government stake at that point?

A. Nothing.

Q. Any witness trees?

A. No, sir.

Q. Now, that was about nine chains and some links south of the northeast corner of twenty-one?

A. Yes, sir; nine chains and ten links.

Q. Well, coming back now to the point you testified to, five chains and thirty links south of the northeast corner of twenty-one, in which direction did you run from that point?

A. We ran a line on out twenty-five chains in the same direction.

Q. Which way, east or west?

A. Eastward.

Q. Did you find any markings on that line?

A. Found three trees.

Q. Then, coming back to the five and thirty links point did you run any other direction?

A. We retraced our line back to the point of

852 beginning.

Q. Did you find any markings along that line, surveyor's markings?

A. We ran on the same line, we came back and run over that line; that is, we checked over our work again you know, and the next day we began at that same point and went over the line at nine chains and ten links south of the section line. We found seven or eight trees marked.

Q. On that line?

A. Yes, sir.

Q. How many did you find marked on the other line, five chains and thirty links within the distance from where you started there until you came to the west boundary of the grant?

A. We found at least seven trees.

Q. What was the relative age from the looks of those two blazed lines?

A. Well, sir, the two lines, both of them, had evidently been run at probably two periods, two different periods, and the lines of trees in neither case corresponded; the one set of trees apparently was marked about, I should say, ten years, in the neighborhood on each line perhaps, and the other set of markings were perhaps thirty years, something like that. I found one tree on the north line apparently probably had been marked may be forty years perhaps.

Q. That is the north line?

A. Yes, sir.

Q. How many trees did you find on that line?

A. Well, I found, I have with me here the two trees that were marked that way, and two old trees that were burned down and the remains that I brought along.

Q. You cut them out, cut out the blazes?

A. Yes, sir.

853 Q. And have them with you?

A. Yes, sir.

Q. Did you count the rings on them?

A. Not carefully.

Q. Those were cut from those blazes?

A. They were.

Q. And you kept them so that they might be—

Mr. Haskell:

I object to that line of questioning, being entirely leading and not the testimony of the witness.

Q. Please take the old pieces of wood that you brought along and testify about where you got it, about how many rings you found?

A. That wood is rather rotten and brittle. This piece of wood is sixty-nine chains east of the section corner of twenty-one, and sixteen, twenty-two and fifteen, nine chains east on the line.

Q. On the section line?

A. On the grant line. That tree had the evidence of having been on the ground for fifteen years perhaps, just a few lightwood pieces, including this, lying in line with the surveyed line.

Q. Now, when you say grant line, which line do you mean?

A. Five chains and thirty links south of the section line. This piece here (indicating) was picked up in line with the large tree lying face downward, the tree was, just about twenty-five links east of the same corner, on the same line.

Q. Then, line five chains and thirty links south?

854 A. South of the section corner.

Q. How near to the surveyed line did the tree lie?

A. Right on the line.

Q. Describe that so that we can understand it in words as much as possible?

A. That piece of wood has in my judgment been a dead piece of wood for twenty-five years.

Q. Is it pine or what is it?

A. It is light wood pine; it is the remains of a tree after all the sap wood had rotted away; that shows the heart where the markings had originally been made, you can see the marks there.

Q. How was that mark made?

A. That was an axe mark, been blazed on the face of the tree.

Q. Does the indication show that it was blazed there while the tree was living?

A. It does, the tree has continued to grow on top of that mark there for quite a number of years, probably twenty years.

Q. Now, has that mark there the appearance of the government marks as made by the government surveyors?

A. It has.

Q. Do you believe that that is a government surveyed mark?

A. I do.

Mr. Dewhurst:

Q. If you saw that blaze standing on a pine tree on a surveyed line, and you were asked to give an estimate of the age of that marking, what would be your approximate state of the age of it?

855 A. The tree that that came from was about twenty-eight or thirty inches in diameter, and the stump of it was burned out, showing that the tree had burned down probably from turpentining, and the tree had rotted away and was all consumed excepting the lightwood, hard, knotty, knarled, you know along the line of the tree where it had fallen, and the stump, the roots were still jagging out of the ground all around showing the diameter of it, and showing where the stump was burned out; and this piece of wood was lying in line with the tree, in the line of the depression that it had left when it was burned out; none of the sappy part or the soft part had remained, almost the entire hard wood had disappeared.

Q. Go on and give the approximate estimate which you would judge the age of that blaze?

A. That blaze I should say shows on the face that it is about twenty years.

Q. From now, from the time you found it?

A. From now I should say about forty years; I simply described the condition of the place.

Q. That is your approximate estimate?

A. Yes, sir; I would estimate it to be approximately forty years.

Q. Now, would you say that it might not be sixty or even seventy years old?

A. It might be seventy years; the tree might have died and stayed there for fifteen years.

Q. Have you seen in that vicinity any blazes which appeared to be as old as that?

A. Yes, sir.

Q. On this same line?

A. Yes, sir.

856 Q. Now, did you find any blazes which appeared to be as old, of equal age, on that line which has been run nine chains and some odd links south of the north line of Section Twenty-one?

A. I found nothing of that character.

Q. How did they differ in both the hacking and the apparent age, showing the growth over the hacks?

Q. Was that a manifest difference?

A. Quite a difference. I have some of those chips with me.

Q. Is there any bark on this pine that you have been testifying about?

A. No bark or no soft wood.

Q. Down to the actual light wood?

A. Hard wood.

Q. Please produce the chips from the other line?

(Witness produces piece of pine tree from line number two, nine chains and ten links south, approximately of the north line of Section Twenty-one).

A. This is a block that Mr. Owens chipped out and it didn't satisfy him very well, he didn't like it, he left that on the ground.

Q. Where was that taken from?

A. That was taken about midway on the section line; it was not on the section line but about midway of the section, about forty-two or three chains from the west grant line.

Q. On that east and west line?

A. On the east and west south marked line.

857 Q. From your judgment, as a surveyor, is that blaze as old as the blaze which you have been testifying to of that burned piece of wood?

A. It is not.

Q. Is it half as old?

A. No, sir.

Q. Please state whether or not that is the general character of the blazes found along that line?

A. Ordinarily, it is.

Q. Did you go across a grass pond in running the line from the west line of the grant at 5.35 or 5.30 chains south of the north line of twenty-one?

A. Yes, sir.

Q. About what distance did you observe that pond travelling from the west line of the grant going east?

A. Approximately, between fifty—about fifty-two chains, fifty-one or fifty-two chains.

Q. What was the distance across that pond?

A. Six chains.

Q. Are the banks of that pond well defined?

A. They are.

Q. Is the place at which you crossed it entirely water?

A. No, sir.

Q. What is the condition of the portion of the pond through which the line six chains run?

A. It is a combination of drainage, including the pond or two divided with little neck between, a little higher part of ground, probably a foot and a half higher, making a sort of little dry spot through there not under water.

Q. At the time you visited this, was it dry weather or wet weather?

A. Dry weather.

Q. How many rains have we had since the first
858 of January?

A. Up to the time we were down there about two or three good rains.

Q. Did you examine the pond where that other line that you have been testifying to, the nine chains and ten links line where it goes across the pond?

A. I have.

Q. What is the width of the pond there at the point that that line crosses it?

A. I didn't measure to the line, but we took the right angle off-set and estimated it about four chains, a little over four chains, about four and a half.

Q. Is there any question whether or not that is pond or pond bottom, to an extent of six chains at the point crossed

by the line five chains and thirty links south of the north line of Section Twenty-one?

A. All pond, all pond.

Q. Who was with you in making this survey?

A. A gentleman from Orlando, what is his name?

Q. Mr. Beasly?

A. Yes, sir; Mr. Beasly.

Q. In running the line starting five chains and thirty links south of the northeast section corner of twenty-one and going west, did you find any post recently set, about ten chains west of the starting point?

Mr. Haskell:

Objected to, as leading and suggestive.

A. Twenty chains, found a post at twenty chains.

Q. Who claimed to have set that post?

A. Mr. Beasly.

Q. How near did the line come to it which you were running, the south line of the grant five chains and thirty links south of the north line of twenty-one?

A. About two feet or two feet and a quarter.

859 Q. What was that post set there to designate?

A. He told me some tract of land, but I have forgotten.

Q. You can't testify what he told you. I will withdraw that question. Please state, Mr. Ginn, if you examined a post nine chains and fifty-seven or eight links south of the point of intersection of the west line of the grant and the north line of twenty?

A. I did, made a careful examination.

Q. Please state the relative size between that post and the post you described at the corner of twenty, seventeen, sixteen and twenty-one?

A. It was about three-sixths diameter and about twice as high. That is the southwest corner at nine chains and twenty-five or thirty links.

Q. That was the big post?

A. From the crossing of the section line.

Q. From your examination, Mr. Ginn, was that an ancient post or a post of recent years, or state what you believe about it from your examination of it?

A. I shook the post to find out whether it was a post set in the ground and it was very loose in the ground. I pulled it out, I measured at that time into the ground, it measured one foot. I cleaned the bottom off and looked for the customary signs of age on the bottom, and failed to find anything that would indicate that the post had been set there over, I would say, not over ten years.

Q. What marks were shown on it under the ground?

A. Axe marks very plain and sharp and distinct;

860 the axe showed that it had been a post sharpened while it was rotten and old and not a lightwood post as you would pick up a solid piece of wood and sharpen it, but showed it had been a post and was used for some other purpose and sharpened and driven in after it had set in the ground some other time at some other point or that same point.

Q. What does that post show marked on its face?

A. It is marked on the north side of the post "X" and the letters "TR."

Q. Was that distinctly marked there?

A. Yes, sir.

Q. Do they or not show any axe marks?

A. They show the marks plainly; that is where they are cut into the post. I stood off thirty feet and could read the marks thirty feet away.

Q. You could distinguish the marks thirty feet away?

A. Yes, sir.

Q. Compared with the post which you originally described at the northwest corner of twenty-one and this post, are the markings as distinct on that northwest corner of twenty-one post as it is on this post we are now discussing?

A. A great difference.

Q. Which is the older?

A. The section line post.

Q. About how many years difference would you say it was difference in your judgment?

A. Figuring from the marking on that post I would say about fifty years.

Q. I believe you stated that you commenced, coming east from the point five chains and thirty-five links south of the intersection of the west grant line and the north line of twenty?

A. Yes, sir.

Q. Do you remember how many chains you went

861 to the grass pond?

A. From the west line of—something like about fifty-one or two chains.

Q. Did you cross any section lines before you came to the grass pond?

A. Why, I crossed the section line at about four chains.

Q. And then the next monumental point was the grass pond which you have just stated?

A. Yes, sir.

Q. About what distance was it when you left the grass pond?

A. It was something in the neighborhood of fifty-seven or fifty-eight.

Q. How far was it to the hammock, that hammock that is beyond the east line of twenty-one?

A. Well, the first hammock that you come to is east of the section line.

Q. What section line?

A. The section line of twenty-one.

Q. About what distance did you go to the hammock?

A. About thirteen and a half or fourteen chains.

Q. Beyond the section line?

A. Yes, sir.

Q. Would that be ninety-eight chains approximately from the corner from your starting point? From the southwest corner of the grant?

A. Very close on to that.

(That's all).

862 Cross-Examination.

Mr. Haskell:

Q. Who employed you to make this survey?

A. Attorney Jones.

Q. Who was with you in that survey?

A. Attorney Jones, and a gentleman that he had employed.

Mr. Beasly.

Mr. Jones:

Q. How long was I with you?

A. Mr. Jones was with me one afternoon.

Mr. Jones:

Q. How many days were you there?

A. I was there three days.

Mr. Jones:

Q. I was with you part of one day?

A. Yes, sir.

Mr. Haskell:

Q. What directions were given to you when you went to make this survey?

A. The directions were to determine whether in my opinion the south line of the Rodriguez grant was marked through as called for by the field notes.

Q. Where did you begin the first work you did?

A. The first point was to trace through and locate, see about this section corner post, section sixteen and seventeen.

Q. Did you follow the west line of the Rodriguez grant?

A. We traced that grant for about a quarter of a mile.

Q. From what point?

A. North of where it crosses the section line, between, I think it is seventeen and twenty-one, or twenty, seventeen and twenty.

Q. What did you do to prove that you were on the west line of the grant at the corner of section twenty-one?

A. Well, we first measured from that post to the line of marked trees on the west line of the grant, where there was a post setting.

Q. Post setting at what point?

863 A. At four chains and a few links west of the section corner.

Q. What was the description of that post?

A. Lightwood post standing about three inches in diameter standing out of the ground about two feet.

Q. Any marks on it?

A. I don't remember, Judge, whether there was or not; I don't think there was, though.

Q. Did you prove that post to be a section corner by any measurements or directions?

A. We are talking now about the one on the west line of the grant?

Q. Uhuh?

A. The section post was marked on it "16" and "17."

Q. Was that inside of the grant you took it?

A. That was inside of the grant about four chains and a few links.

Q. Now, about the post that you found the distance to, on the grant line?

A. It is a little over four chains east. I set up the instrument and took the bearing with the field notes, and the needle gave me by computing magnetic variation, I found it hit the post alright. I measured to within the distance and found that it overran some, but I found that it intersected a line of well blazed trees which were evidently on that line. I have the block with me to show you.

Q. Did you attempt to go down the west line of the grant at any point, other than at a point five chains and thirty-five links south of this post?

A. Yes, sir; I ran both of those lines down the grant line and the section line.

Q. How far down did you go?

864 A. I went down as far as the center of section twenty or twenty-one.

Q. Did you find anything on that line?

A. Nothing, only marked trees along. At nine chains and thirty links I found a tree well marked on the proper bearing, and found a stake there evidently set by surveyors at a previous survey.

Q. This was at a point nine chains?

A. In the neighborhood of nine chains.

Q. Was this the post you have described as being a big post?

A. No, sir; that described post is about four chains to the west of this point.

Q. Practically the same distance south of the northwest corner of twenty-one?

A. South of that point that we measured west of the northwest corner.

Q. Did you have the field notes with you?

A. Yes, sir.

Q. Did you run or attempt to run a line east from the

the post nine chains and twenty-five or thirty links south of the north line of Section Twenty?

A. No, sir.

Q. You did not attempt to run that line east to see what its natural bearings were?

A. I calculated those bearings from the other men's survey.

Q. Then, you did not actually run it, yourself, that line?

A. No, sir; just traced it.

Q. You did chain from this point five chains and thirty-five links south of the north line of Section Twenty?

A. Yes, sir.

865 Q. Did you chain as far as the grass pond?

A. Yes, sir.

Q. Was the natural depression plainly marked at this point?

A. Yes, sir.

Q. In what direction does that depression of the edge of that depression run?

A. Are you talking about the edge now, about the south line?

Q. Yes, sir?

A. Apparently, very near north and south.

Mr. Dewhurst:

I don't understand that he is talking about the south blazed line.

A. Yes, sir; the south blazed line, not the south line of the grant, the south blazed line.

Q. You misunderstand me, possibly, I am talking about the grass pond?

A. No, I understand you; the north line strikes the pond somewhat of a little bit further east than what the south line strikes it.

Q. How much farther?

A. Oh, I should judge a chain or so.

Q. Then, the edge of the grass pond really runs east of north and south of west?

A. Well, sir, right up to this very point where the lower line crosses, it runs very near north and south, and then it

makes a little turn to the east on the north boundary and runs easterly with the north bank of the pond.

Q. How far across did you say it was, from the edge of the grass pond to the other side of it?

A. On this south line?

Q. Yes, sir; on the south line?

866 A. About four and a half chains.

Q. How far on the line that you ran?

A. About six and a half chains.

Q. On the line that you run, did you find any post intersecting the east line of Section Twenty-one?

A. No, sir.

Q. Did you survey the east line of Section Twenty-one south from the line that you ran?

A. Yes, sir; just a short distance.

Q. How far?

A. I set up at the section corner and turned off the bearing and ran south and struck the corner that they had set at nine chains and ten links.

Q. Describe the appearance of the ground as to depression at this point?

A. The ground where the posts sets is about thirty feet—twenty-five or thirty feet above the level of the spring branch.

Q. Practically, on its edge?

A. Very close to where it commences sloping down; I would say about fifty feet.

Q. How far is it from that post to the spring, Sulphur Spring branch?

A. Following the section line? I judge it is about three hundred feet.

Q. You say it is about three hundred feet from where this post sets, running easterly to the spring branch?

A. Yes, sir; you see the branch there runs off at a very sharp angle on to northeasterly from where the spring rises, at a very sharp angle.

Q. Did you survey the line that you ran east from the east line of Section Twenty-one?

A. Only run with the transit down there about

867 fourteen chains.

Q. Did you cross the spring branch?

A. Yes, sir.

Q. How far from the east line of Section Twenty-one?

A. At nine chains and forty-five links.

Q. How far was it from this last point named, to the hammock?

A. About four chains.

Q. You did not attempt to take any measurements, did you, on the other line south of the one you run, to see whether it fitted into the field notes?

A. I measured down fourteen chains, struck the hammock about fourteen chains from the section line.

Q. I mean you made no measurement on the south line south of the one you ran?

A. Yes; I ran that line out just to check up on the hammock about fourteen chains; fourteen and a half I think it was.

Q. It was practically the same as the one you ran?

A. Very close to it.

Q. After you left the east line of Section Twenty-one and came to the Spring Branch, as you say, did you make any comparison of that distance with the field notes that you had?

A. Yes, sir.

Q. How much did it differ from the indications or readings of the field notes?

A. Something like about a chain; not quite a chain; that part of the woods were grown up with palmetto and had the appearance of being washed in, that is sunk from the higher ground washing down it like.

868 Q. On the line that you ran intersecting the east line of Section Twenty-one and west line of Section Twenty-two, I understand you to say that it was ten chains about to the spring creek or branch?

A. Nine chains and forty some links.

Q. What distance did the field notes call for this creek from that point of intersection?

Mr. Dewhurst:

The field notes are in evidence; we object to that question, as the field notes are the best evidence.

Mr. Haskell:

He can answer it if he knows.

A. If I remember properly, why, there was about three chains.

Q. Then, you would not say, Mr. Ginn, as an expert surveyor, that two lines run from the same line on the west and four chains apart properly intersecting the grass pond at approximately the same distance crossing the grass pond at substantially the same distance, the one on the north intersecting the east line of Section Twenty-one at a point ten chains west of the Spring Branch or run, and the southerly line intersecting the east line of Section Twenty-one and the spring branch or run at, say five chains or less, that the south line more nearly corresponded with the calls of the field notes than that of the north line?

Mr. Dewhurst:

We object to that question, on the ground that it states matters which are impossible, no such two lines could be run; that the question is unfair in that it does not place before the witness the other features which are set out in the field notes as natural objects, it simply confines him to those which are mentioned in the question, and further, that it fails
869 to call the witness' attention to the fact which he has testified to, that upon the more northerly line he found evidences of ancient blazes, while on the southerly line he found that the blazes were evidently lines after the age of those made on the north line, and therefore would eliminate entirely the plain patent evidence of the actual survey, on the ground of the north line as described in the field notes.

A. Well, now, I will just state this: you fellows are lawyers, I am a surveyor, the main point in the whole business you overlooked, that is when a surveyor makes up his mind on a thing he looks at other things to judge over in addition to the exact things, as they appear just at the present day. Taking for granted that this survey was made sixty years ago, I would state that the present indications as far as the Spring Branch is concerned, would be a close indication of the call for that point.

Q. For the south line?

A. For the south line, while the call for the grass pond would be a closer call for the north line where the two points on it conflicted materially, one in distance across and the other in distance to, is that right? And the line there (indicating) on the north line just escapes at the present time, a branch

that is a drain to a pond, that is about six or eight chains to the west on that same line, that outlets down through that corner, but misses the corner a little bit at the present time. It might be that at the time the survey was made, originally, it might have been considerably closer. The branch has evidently changed a little bit on account of being covered over nearly the entire length of it with palmetto. These
870 palmettos has been around the water at different points, and the moisture contained from the water has gathered moss and material lodged against them, causing an undergrowth to spring up in that time, the erosion from the flowing waters has constantly been changing that channel, so that it is a very hard matter for a surveyor to determine exactly just about how the conditions would be.

Q. (Addressing the Reporter). Well, I will ask you that you read my question to the witness and have an answer to that?

(Question read to the witness).

A. I would say, yes.

Q. Now, Mr. Ginn, to what extent did you examine the south line running east from the large post you have described as being about nine chains or more south of the north line of Section Twenty?

A. I followed over the line and examined all of the marked trees on the line.

Q. You did not find any old decayed dead stumps lying on that line, did you?

A. There was a stump.

Q. Where was that?

A. That was close to the bay head; it was about half way across.

Q. Up across the section?

A. Yes, sir.

Q. What was the appearance of the blazed trees on this line which you traced?

A. The trees were well blazed and showed distinctly that the line had been surveyed.

Q. Many of them in there grown over?

871 A. They were, I suppose, just about like ordinary

witness trees or line trees would be that had been blazed, some of them had grown over and some still open.

Q. From your experience, has it not been a fact that those blazed trees which were burned over from time to time by various forest fires or otherwise, failed to be grown entirely?

A. Yes, sir.

Q. Is it not practically impossible from the outside, just from observation to determine from a blaze that is grown over as I have described, the length of time without cutting into the blazes how old or anywhere near how old it is?

A. Yes, sir.

Q. How many blazed trees in tracing over the west line of the section to the east line of Section Twenty-one did you observe?

A. I determined that there eight line trees, and there was three or four more trees on the line that were close to it that had been blazed for wagon road or different guide trees.

Q. I am talking about the south line?

A. Yes, sir.

Q. Did I understand you to say that on the line that you surveyed as and for the south line of the grant you found how many trees?

A. About seven trees.

Q. Running the same distance?

A. Yes, sir.

Q. How many of these trees on the south line you traced were grown over?

872

A. Well, entirely grown over I think there was about probably two or three of them.

Q. Then, it is a fact, is it not, that scars will not be so deep on trees that are not burned regularly as are on those that are burned more oftener?

A. Yes, sir.

Q. What was the nature of the timber of these trees on the more south line, the one you traced?

A. Hard pine.

Q. As to size?

A. Averaging from fourteen inches to twenty-four.

Q. Did you trace this line further east than to the hammock?

A. Twenty-five chains.

Q. That would carry it a little into the hammock?

A. Excuse me, sir, it is twenty-five chains from the section line east.

Q. That is, that you traced the line?

A. That is where they had cut it through, or Mr. Owens had cut it through, he had set up a pole along, I just followed his line.

Mr. Dewhurst:

Q. What line are you testifying to now?

A. The south line.

Q. Who was with you when you were surveying the line you have testified to as being the south line of the grant?

Q. You mean the line we just followed there now?

A. No; the one you surveyed?

A. Mr. Beasly, the colored man and Mr. Butler.

Q. Were all of the trees on this line that you
873 have testified about ancient and clearly marked blazed trees?

A. Yes, sir; the ones that I counted in my seven were good substantially marked trees.

Q. On the line you surveyed, did you cut out any of the blazes?

A. Yes, sir.

Q. Is that what you determined them to be old blazes from?

A. I estimated the age from that; yes, sir.

Q. What age did you place those blazes to be?

A. I would say about as near as I could tell about forty years; and as I said before, there is another line of trees also that are not so old.

Q. On the line that you surveyed or the line that you traced?

A. Just south of the line that we surveyed, those two lines seemed to be about—I guess they both run to a point on the east, but they diverge a little on the west fifteen or sixteen feet.

Q. You took the grant line of the west for checking up your survey, did you not?

A. Yes, sir.

Q. And you commenced at a point five and thirty-five chains south of the north line of that Section Twenty-one?

A. That is our checking point, south a little over four chains west.

Q. Did you find any government posts at any point on that line running east from the west line of the section?

A. No, sir.

Q. Did you find any posts at all on that line, other than the Beasley post?

A. One post on the bank of the creek, on the
874 bank of the saw grass pond, about ten feet south of our line.

Q. Describe that post?

A. It is a lightwood post about four feet high, driven there probably for a check measurement in some previous survey.

Q. You would not state that that was a government stake?

A. No, sir.

Q. Have you ever checked up or made any other survey of the lines of this grant at any other point than from near the southwest corner and on the south and west lines?

A. No, sir.

Q. And you followed this line only to a point in the hammock twenty-five chains east of the east line of Section Twenty-one?

A. That is all.

Q. You can't testify then, as to what the conditions were east of that point?

A. No, sir.

Q. What conclusion would you come to, Mr. Ginn, if upon chopping into one or more of the blazed trees you saw on the south line that you traced, if the wood grown over the blazes should show fifty or sixty clearly marked and defined rings of growth as to the comparative age of those blazed trees with the blazed trees you have testified to on the line that you have surveyed?

A. I would say the same age.

Q. Then, you used as a basis of your computation, one and a half rings for a year's growth, is that the usual method of measurement?

A. In computing on the pine tree that it ought
875 to ring every time that it throws off its leaves and takes on new sap and starts a new growth.

Q. How often does that take place?

A. Well, I suppose ordinarily about once a year, some-

times they will do so twice a year, owing to the season; if it comes a real dry season for quite a while and then starts up with an extreme wet season they will start over again and make an extra growth.

Q. Is it not a fact that the usual basis of such computation is one of these rings to each year's growth?

A. Yes, sir.

Q. That is the general acceptance of it?

A. Yes, sir.

Q. And you did not actually measure the distance across the grass pond on the south line you traced, did you?

A. We triangled, projecting it up to our line that we measured on turning the angle.

Q. How far did you say you were from the Beasly post on the line that you surveyed?

A. A little over two feet, I think about two feet, and three or four inches.

Q. Do I understand from your testimony that you pretended to state as an expert surveyor that the post that you found at the point a little over nine chains south from the north line of section twenty was not a government monument or post?

A. It didn't look like it to me, the bottom of it; the top of it looked like it might have been a pretty old post, while the bottom of it looked newer. What I mean by that, Judge, is the post had been used twice, had been sharpened
876 over again.

Q. That would be made, would it not, by the fact of the post being pulled up and sharpened and driven down again then in the same place?

A. It might have been.

Q. You don't mean to color your testimony then with the idea that because a post appeared to be resharpened that it had been changed from its location?

A. No, sir.

Q. Is it not a fact that those posts had the appearance of being worn by the weather?

A. It was a well worn post.

Q. Your only deduction was that the post which you found at the northwest corner of your section twenty-one appeared to be older than that one?

A. Much older, yes.

Q. And you found no other post around there at or near the southwest corner of this grant?

A. No, sir.

Q. The line that you ran the tracing, being the south line, was a clearly defined and marked line, was it not?

A. Yes, sir.

Q. All the way as far as you traced it?

A. Yes, sir; excepting east of the section line of section number twenty-one, I found no marks but one tree, and that was a rosin tree which is marked on the outer bark; not marked into the tree but on the outer bark.

Q. After crossing the grass pond and approaching the hammock, is there much evidence of tree growth there?

A. No, sir; not much.

(That's all.)

877 Re-Direct Examination.

Mr. Dewhurst:

Q. You stated in your cross-examination that you found a third surveyed line running some short distance south of the line which runs five chains and thirty-five links south of the north line of section twenty-one?

A. Yes, sir.

Q. Was that a well-defined line?

A. Yes, sir.

Q. What was the apparent age of the markings on the trees compared with the line which ran five chains and thirty-five links south of the north line of section twenty-one?

A. Why, it looked like it was older line, while number of trees looked very ancient, a portion of them even faded back into the other line so you could not distinguish them hardly, one from the other, but on the west part it had the appearance of being older markings than where the proper surveyed distance made them, where we marked it off where we ran through to determine.

Q. About how far apart were those two lines?

A. I should say about sixteen or eighteen feet.

Q. What was the relative age, judging from appearance, of that third line as compared with the line which is blazed

on the trees ten chains south of the north line of section twenty-one?

A. Well, the trees are older marked trees.

Q. You think this third line was older marked?

A. Yes, sir.

Q. Have you any interest in this controversy?

A. No, sir.

Q. Are you employed by any of the parties to the suit or by any counsel in any other matters except to make
878 this survey?

A. No sir.

Examination.

By Mr. Jones:

Q. When did you first meet me?

A. I believe I met you on the morning we went on that survey.

Q. I believe you stated, Mr. Ginn, that there were indications of some change in the course of the Sulphur Spring Branch?

A. Yes, sir.

Q. If that south blazed line that you traced crossed the Sulphur Springs Branch at this edge where it crossed the east line of twenty-one, would it cross that Sulphur Springs Branch again going east?

A. No, sir.

Q. I believe you testified that at the point five chains and thirty links from the northeast corner of twenty-one where it crosses the east line of twenty-one, there were indications of a blind branch at that point?

A. The outlet from the pond, about four chains and a half or five west right on the same line and the bay head comes right up to that corner, that is about thirty feet or forty.

Q. Which is the more prominent natural monument, that grass pond or the Sulphur Springs Branch run?

A. The grass pond.

Q. You testified in regard to a long question asked by counsel for complainants, in regard to the Sulphur Springs Branch, does that alter or change the fact that you have testified to there being a distinct marked line at five chains and

thirty links south of the north line of section twenty-
879 one?

A. No, sir.

Q. You were describing the post at the southwest corner as claimed by the defendants on of the grant, nine chains and some links.

A. Nine chains and fifty-eight links.

Q. As being a worn post, is it as worn or what is the apparent wearing of it between it and the post at the northwest corner of section twenty-one?

A. Well, I would say about thirty per cent.

Q. Which is the older?

A. The section post.

Q. The other is thirty per cent younger?

A. Thirty per cent of the older.

Q. Thirty per cent of its age?

A. The larger post is about thirty per cent of the whole age of the other post.

Mr. Dewhurst:

Q. Then this post which sets at a point on the west line of the grant extended to a point which would be about ten chains south of the north line of section twenty, appears to be only about one-third of the age of the post which sets at the northwest corner of section twenty?

A. I am talking about the markings on the post; that the markings on the two, that the larger post the southwest corner post as claimed is one-third of the age, since they were made, of the section corner post.

Q. And that post is the post which is located upon the extension of the west line of the Rodriguez grant at a point about ten chains south from the north line of section twenty?

A. Yes, sir.

(Witness excused.)

(Signed) WILBUR A. GINN.

880 Mr. Jones (dictating):

Counsel for complainant announced that they expected to be present and notified to be present at the hearing at Palatka, the witness Albert Royal at the last moment ad-

vised counsel that his physician was unwilling for him to make the trip; that his testimony is material and is that they expect to prove by the said witness the following as set out, and that they notify counsel that they desire to take his testimony before a stenographer at Sanford, Florida, on Wednesday, the 12th day of April, 1911, and that this hearing be adjourned to be continued at Sanford tomorrow to enable them to take this testimony; and that if it is inconvenient for counsel to attend, if counsel are willing to stipulate that that witness if called would testify as above recited, we are willing to allow such stipulation to go upon the record in lieu of the testimony of the witness, otherwise we must insist on taking the testimony within the time allowed by the Court. If counsel on the other side can present any method by which the testimony of this witness can be taken not to inconvenience counsel, we would be very glad to oblige them.

Mr. Haskell:

One of the counsel for the defendants here state the entire management of this case has been with and conducted by Cooper and Cooper; that Mr. Cooper has conducted these examinations, and is absent in attending court in Jacksonville, Florida, and cannot possibly be present at the proposed meeting at Sanford, on Wednesday, April 12th; that the Circuit Court is in session in Putnam County, at Palatka, and have matters that have to be attended to before the court, that it is impracticable and almost impossible that I should attend the hearing on Wednesday; that we signify our willing-
881 ness to have such a hearing at Sanford at a later date in the week at which Mr. Cooper can be present, that we have witnesses and testimony to introduce that have not been possible here today at this hearing and cannot be introduced until the closing of the complainants' testimony; that these witnesses have been released, and that it will take several days, two at least, to get their attendance for the purpose of testifying as contemplated by defendants' counsel; that the line of testimony to be pursued is an entirely new matter brought up as a surprise to defendants; that their purpose is to introduce surrebuttal testimony to that of the witness this day examined and as to the testimony intended to be given by the witness Royal, that these defendants signify their willingness for such purpose to consent to the taking of such testi-

mony upon the time indicated, of course subject to any valid objections on the part of complainants as to its materiality, pertinency or right to introduce the same.

Mr. Jones:

To oblige counsel, counsel for complainants say that they will ask to have this hearing adjourned to Sanford, or to the residence of the witness near Sanford on Friday next.

* * * * * * * *

883 Hearing held on April 14th, 1911, in Lake County, Florida, near Cassia.

Present: Mr. J. H. Jones, counsel for complainant; Messrs. E. E. Haskell and Charles P. Cooper, counsel for defendants.

Mr. ALBERT ROYAL, witness for complainant, first being duly sworn, testified as follows:

Questioned.

By Mr. Jones:

Q. What is your name?

A. Albert Royal.

Q. Where do you live?

A. Cassia, Lake County, Florida.

Q. How long have you lived there?

A. I have lived here for forty-six years.

Q. Are you familiar with the grant near Cassia, known as the Powell grant or Rodriguez grant?

A. Yes, sir.

Q. Please state if you are familiar with the boundaries of the grant?

A. I helped to survey it once.

Q. Who did you help?

A. Mr. Beardall.

Q. Was the grant surveyed out before he surveyed it, with any distinct lines?

A. We didn't find any lines except section lines. We started section posts.

Q. He practically started the section?

884 A. Yes, sir; he blazed the marks.

Q. How long ago was that, Mr. Royal?

A. I can't exactly state because I had no interest in it, but it has been a long time ago. The nearest that I can get at it, it was when Thomas was working for them. About the time Thomas commenced.

Q. Please state if you are familiar with the country on which the grant is located?

A. I have been going on it ever since I have been large enough to go in the woods. Go hunting on it about every month.

Q. Please state whether or not prior to the Beardall survey, if there was any large post at the southwest corner of the line?

A. I never saw it.

Q. Did you ever go there?

A. Yes, sir; I was there a number of times.

Q. What were you doing there?

A. Mr. Adams, a real estate man had some land in his hands to sell. He had me to look it up. I looked over this land and around it.

Q. State when you first saw that post and what condition it was in when you first saw it.

A. I don't remember seing it. Quite a while after the Beardall survey I saw it.

Q. What condition was it in when you first saw it?

A. Well, I took it to be a new post that Mr. Beardall had put there.

Q. No post there when you first saw it?

A. No original government post.

885 Q. Did you know where the Cash homestead was?

A. Yes, sir; the Cashen homestead.

Q. Where was it?

A. It joined the grant.

Q. Did you help to survey any homestead on the south line of the grant?

A. No, sir; I located it at sight.

Q. Are you familiar with the Drawdy homestead?

A. Yes, sir.

Q. Please state whether or not the cabin that is near the sulphur spring is on the Drawdy homestead or not?

Counsel for defendant object to the question on the following grounds:

First—That the witness is not qualified to testify as to where the Drawdey homestead is, that he has said that he had nothing to do with the surveying. There is no evidence before the Court to show that there is any connection between the Drawdey homestead and the Rodriguez grant. The question of where the Drawdey homestead is is not material in this case; and that the question is leading and assuming facts that have not been proven.

A. Seven years ago, Mr. O'Hare, Bryan Minchew and Carl Fries ran that line—the south line. We found that cabin was off the grant according to our line.

Counsel for defendants move to strike out the testimony on the ground that the witness is not qualified to testify; second, that there is nothing showing any basis for his survey; that it is immaterial, irrelevant to the issues in this case and incompetent.

886 Q. Did you know Mr. McIntosh?

A. Yes, sir.

Q. Did McIntosh build any cabin there or near there that was burned down?

A. Yes, sir.

Q. Where was it located?

A. Within a few feet of where the one is now located.

Q. Whom was McIntosh working for?

A. For the Wilson Cypress Company.

A. [Q.] At the time he built the cabin?

A. Yes, sir.

Q. Did you call his attention to the location of the cabin?

Counsel for defendants object to the question as immaterial, irrelevant and leading; that there has been no evidence produced to show that the witness was or is competent to locate

and find the line mentioned or that it was properly located or surveyed; no basis of the survey.

A. I did.
Q. What did you say?
A. I asked him if he was not building it off the grant.
Q. What did he say?
A. He said it was on the Drawdey homestead, but as he had it so near done he said if the company didn't object he wasn't going to move it. If the company didn't kick he wouldn't.
Q. Did McIntosh help to survey the Drawdey homestead?
A. Yes, sir.

887 Counsel for defendants object to the testimony on the ground that the question is leading, immaterial, irrelevant and incompetent. They move to strike out the answer of the witness.

Q. Why did McIntosh admit that the cabin was off the grant?

Counsel for defendants object to the question on the ground that it is leading, immaterial and irrelevant. That there is no evidence to show that McIntosh or the witness are competent to judge whether the cabin was or was not on the grant. That it is incompetent. That there is no basis to show that there had been a survey made.

A. He said according to the survey made on the Drawdey homestead it was off the grant.
Q. Was Mr. Fries the surveyor you alluded to there?
A. He was surveyor for the company. I can't say that he was the original surveyor.

Counsel for defendants move to strike out the testimony on the ground that it appears on its face that it is incompetent testimony—immaterial. That there is no proof of the survey of Mr. Fries and no evidence of the basis of that survey.

Q. I believe you have testified, Mr. Royal, that prior to

running the blazed lines around the grant by Mr. Breadall that there were no distinct blazed lines around the grant?

A. No lines that a person traveling through the country would notice. I never knew where the line was until Mr. Beardall ran it.

Q. Has your attention been called to the true lines by any public officer of the county?

888 Counsel for defendants object to the question on the ground that there is no evidence to show that witness is competent to testify as to what lines are true lines. That it calls for an expert opinion. That there is nothing before the witness to indicate what is meant by true lines; that it seeks hearsay evidence; that it is immaterial and irrelevant.

A. By the county surveyor of the county. I helped to survey the line with the county surveyor—on the north line of the grant—the homestead of John Messing. In surveying this homestead the county surveyor got his start from the section posts on the grant lines and found that it was wrong and that we had to go to another section post to get a start. Then he told Mr. Messing that this line would go to the Beardall survey and showed Mr. Messing where his lines were.

Q. You were on that survey?

A. Yes, sir.

Q. Then the Beardall line at that point was wrong?

Counsel for defendant object to the question on the grounds that it seeks hearsay; that there is no evidence before the Court as to what was the Beardall line; that there is no showing that the county surveyor made the proper survey of this line; that it is hearsay, immaterial and irrelevant and has nothing to do with the grant line in dispute.

A. The county surveyor said it was wrong.

Counsel for defendants move to strike out the testimony on the ground that it is hearsay and incompetent.

889 Q. Please state whether or not Beardall set up corners to that grant, as far as you know, according to his survey?

A. We set up one as the northwest corner. We put up two or more posts that we didn't find on this north line. We put up the posts where we couldn't find any.

Q. You were traveling on section line—on north line?

A. Yes.

Q. Please state whether or not that was the reason why Mr. Geo. O. Butler said that Mr. Messing's line didn't go to that line?

Counsel for defendant object to the question on the ground that it seeks incompetent evidence; that witness is not qualified to give the information as to what line it was; that it is not competent evidence; that it is immaterial and irrelevant.

A. Mr. Butler explained to him and said "your line don't go to that line" and he told him that this forty joining the grant was about seven acres short and he told how many feet but I don't remember how many feet, but he told him just what it was. They put up some temporary posts for Messing at the corners.

Q. That was on the north line of the grant?

A. Yes, sir.

Q. Mr. Beardall put posts to correspond with his survey?

A. Yes, sir.

Cross-Examination.

By Mr. Cooper:

Q. Mr. Royal, do you know, can you swear, that there had not been a previous survey to Mr. Beardall's of the Rodrigues grant?

890 A. I don't remember. I cannot swear. There could have been and I never know of it.

Q. Can you swear that the Rodrigues grant had never been marked prior to Mr. Beardall's survey?

A. Not in my recollection. There was marks where we surveyed, but we took them for government marks.

Q. You didn't survey on the south line?

A. Only on the north line.

Q. You can't swear what he did on the south line?

A. I didn't see him. He was out surveying round there, but I didn't see him.

Q. Can you swear that Mr. Beardall put that northwest corner post at the grant?

A. I didn't see him put it there, but he was the only man I knew of that surveyed it.

Q. Had you ever had occasion before that time to make any special investigation of the S.W. corner of the grant?

Q. Only when looking up the Cashen homestead.

Q. Why was it that you asked Mr. McIntosh whether or not his cabin was on the Drawdey homestead?

A. We were around there with Mr. McIntosh at the cabin when he was building it. After this survey had been made I had followed the lines, and then it was to get at some other lines there.

Q. Mr. Royal, can you swear that the Drawdey homestead had been surveyed prior to the building of this cabin?

A. Mr. McIntosh helped Mr. Fries survey the Drawdey homestead. That is what McIntosh told me.

Q. Then you are not testifying to your own knowledge?

A. I never ran out a line in my life. Only knew where it was.

Q. Did you have any particular reason to inquire of this from Mr. McIntosh?

891 A. No particular reason. Just talking about it —no interest.

Q. Mr. Royal, can you state approximately in what year the Beardall survey was made?

A. I cannot. Only Mr. Thomas was living on the grant and Mr. Thomas left there in January, I don't know what year, but between the two big freezes. He killed a nigger on a train and had to leave. While he was on this grant the survey was made. He was living on the grant.

Q. How long did he live on the grant before he left?

A. I don't know.

A. [Q.] A number of years.

A. Several years. I don't remember how many.

Q. Mr. Royal, you are not a surveyor?

A. No, sir. Never in my life. Only helped.

Q. Mr. Royal, how far outside of the grant line was this cabin built—that Mr. McIntosh built?

A. I never measured it to see how far it was.

Q. Can you state about?

A. It was some distance. We never measured it. Accord-

ing to the grant line you are discussing I can say it was outside of the line we made there, but I cannot say how far.

Re-Direct.

Q. Please state whether there was any corner post at the place where there is a post now—any large corner post, at the time you were looking up the Cash or Cashen homestead?

Counsel for defendant object to the question on the ground that there is no evidence to show that the Cashen homestead was incompetent evidence; that the witness did not
892 know where to look for the corner posts in question; that it is immaterial and irrelevant.

A. I never saw any posts—couldn't find any. Didn't run any lines.

Q. Are you familiar with the Cash or Cashen homestead?

Counsel for defendant objects to the question on the ground that it is leading; that there has no evidence been given to show what the Cashen homestead was or where it is, or that it has any connection or materiality whatever with this case and calls for the non-expert opinion of the witness.

A. I am.

Q. Please state, Mr. Royal, whether at the time you looked up the Cash or Cashen homestead, that post that is now standing at the southwest corner at the end of what is known as the Beardall line—whether that post was there at the time you looked up the Cashen homestead?

Counsel for defendants object on the ground that there is no evidence to show what the Beardall line was or that there is any evidence of any post standing at the end of the Beardall line; that the question assumes facts not proven. Calls for a non-expert opinion; that it is incompetent, immaterial and irrelevant; that the witness is not qualified to testify to any post now on the grant.

A. I looked up the Cashen homestead before it was surveyed.

Counsel for defendant make the same objection as last above.

893 Q. When you say you looked up the Cashen homestead prior to the survey being made, do you mean the Beardall survey?

A. Yes, sir.

Q. Then I understand you to say that there was no distinct line prior to the Beardall survey?

Counsel for defendant object to the question on the ground that the witness has plainly stated that there were marks on the ground prior to that time. That the question seeks to lead—that it puts words into the mouth of the witness contradictory to what he has already said; that it is immaterial, irrelevant and incompetent.

A. You can't follow any lines in this country except section lines. You have to follow section lines—government survey of section lines.

Q. There was no distinct blazed line along the south line prior to the Beardall survey?

Counsel for defendant object to the question, that it is putting words into the mouth of the witness; that it seeks a non-expert opinion as to where the south line was; that there is no evidence that the witness ever located the south line and there is no evidence to identify the line testified about.

A. I never followed the south line before that—only beginning at the Cashen homestead at the corner; never had any occasion to.

Q. After the Beardall survey there was a blazed line?

A. Yes, sir; you could follow it.

Q. How far did you live from the grant?

A. About one and a quarter miles.

894 Q. At what place are you now testifying—at your residence?

A. Yes, sir; at my residence.

Q. Have you any interest in this matter?

A. Not a bit in the world, in any way, shape or form.

Cash. ALBERT ROYAL.

Counsel for complainants rest. Object to the taking of further testimony in this cause and for grounds of objection say that this cause was commenced in 1907, that counsel for complainant close their case in chief, except as to matters of pedigree, in February, 1909, and that complainant made out its case and that during the period from February, 1909, until in February, 1911, defendants put in their case and within the hour complainant completed their testimony, and later, under order of the Court or by agreement between counsel, granted complainants leave to put in rebuttal testimony. Complainants then permitted the defendants to put in further testimony in their behalf and complainants under leave granted by the Court or by agreement between Counsel, proceeded to put in rebuttal testimony, which they now close, and they now object to the further opening of the case for putting in additional testimony, which is not warranted by rule and no extension of time for such action having been asked or obtained from the Court, the case of the defendant having been closed and there is no reason why there should be the further taking of testimony; that same would be in violation of the rule and order of procedure of the Court. Therefore, complainant file their objections to the taking of further testimony in the cause.

The name Cashen is wrong. Cash is the right name.

895 Defendant's solicitors respectfully refer the Court to the record of testimony in this cause, to correctly ascertain the order of taking said testimony and the propriety of the admission of further testimony by the defendants, and respectfully submit that Court has never granted leave to either complainants or defendants to interpose any testimony and that there is no rule violated by the admission of surrebuttal testimony and that the introduction of same is a matter of right under law.

Direct.

By Mr. Cooper, counsel for defendant:

Q. Mr. Howard, are you the same witness who heretofore testified at Palatka in this case on behalf of defendants?

A. Yes, sir.

Q. Mr. Howard, since giving your last testimony have you

made any investigations or surveys in or on the Rodriguez grant in Lake County, with reference to which you have testified heretofore?

Counsel for complainant object to the question on the grounds that it seeks to contradict facts already testified to in this case by witness for defendant.

A. Yes, sir.

Q. State along what lines.

A. Along the line of examination of the reputed south line of the grant—5.35 chains south of the north line of section 21.

Q. When you say "reputed", do you mean the line claimed by the complainant as the south line of the grant?

A. I do.

Q. What investigation or survey did you make along that line?

896 A. In my previous examination I stated that I had not carefully examined that line in the neighborhood of the southwest corner of the grant and I wish to say today that I have found no additional information one way or the other.

Q. Please state, Mr. Howard, what you did and what line you ran—what investigation you made there?

Counsel for complainant object to the question on the ground that it seeks to contradict testimony already put in documentary form by the defendants—seeks to contradict and impeach their own testimony.

A. I was enabled to state from personal examination as to the condition of the trees in that neighborhood which I was unable to do on my previous examination. I was unable to state what I do now—that I do not think lumbering operations have been carried on to any great extent in the immediate region of the southwest corner of the grant, save outside of the lines and stakes I found. That there were too few stumps to admit of my thinking that marked trees had been designedly removed or that any noticeable attempt had been made to change the line by destruction of marks.

Q. Did you run the line complainants claim to be the

grant line—5.35 chains south of the north line of section 21?

A. I did. I measured south from the northwest corner of section 21 the 5.35 chains and found no indications of a corner there nor indications of stumps having been removed, as far as I could ascertain. Two neighboring pine stumps were the only ones contiguous and would not agree with the pine trees described in the field notes, neither could any other

897 be found in that vicinity that answer to them.

Q. Did you measure the distance from that point where the southwest corner of the grant would be if the complainant's claim were correct, to the grass pond mentioned in the field notes—in the south line of the grant?

Counsel for complainant object to the question as leading, that it seeks to place in the mouth of the witness the answer desired, that it is irrelevant, immaterial and indirect impeachment of the former testimony given by the witness.

A. I did not at this time. I did so before the former testimony and gave out at that hearing the measurements found.

Q. State whether or not that line claimed by complainants as the south line of the grant intersects the east line of section 21 in any branch or on the edge of any branch or run or creek of any kind.

Counsel for complainant object to the question as leading.

A. I went to the east line of section 21 and at the point where we had located previously its intersection with the grant line and as we ran out we placed a stake. I then measured out north along this section line to the point where 5.35 chains south from the section corner would intersect, and thence at that point or near that point the grant fell away, north, south and east. There were no signs at that point of any dried water grass or any dried water brake or holly, which would deny there having been a branch within two hundred or three hundred feet of that intersection.

Q. What was the nature of the ground?

A. High pine ground there and dry scattered bushes. Pointing my compass east I would say it was at least 500 feet on a general declivity before any visible creek was reached.

Q. Did you make any further investigation or
898 surveys on that grant, or measurements?

A. The stake I just testified about, I placed at the intersection of the section line with my identification of the grant line, which was two chains north of the Sulphur Spring in the sink hole. I set my compass directly east for the continuation of the grant line. I then measured measured along that line from the stake, I just set—89 feet to the edge of the water, running from the spring ten or twelve feet across the water, without measuring, according to my judging, to the other shore, making about one hundred feet. I noted that the distance given in the field notes from the crossing of the section line east was one and one-half chains, which corresponded to this measurement.

Q. What line do you refer to when you speak of this extension?

A. I was referring to the crossing of the section line—the east line of section 21 by the grant line as I was running it, from the standing stake 9.57 chains south of the north line of the section.

Q. What section?

A. Section 20.

Q. Mr. Howard, did you make any investigation for blazed trees along the line 5.35 chains south of the north line of section 21, which complainant claims to be the south grant line, and if so what was the result?

A. I followed that line by the compass east from the west line of section 21 and the west line of the grant line, without measuring, for at least one-half mile, and along that line I failed to find any distinct indications that the grant line was located there.

Q. Did you find any indications that it was there located?

A. I found that one or two attempts had been
899 made—one in particular—where a bump had been out out on a tree, which had been carried down until all indications disappeared.

Q. I asked you if you found any blazes on that line which indicated that that line was the south line of the grant?

A. I did not find any save recent marks, too recent to be regarded as such.

Q. Why do you say "too recent"?

A. I didn't find any that I considered to be over fifteen years of age.

Q. Are you certain they were not over that age?

A. Those that I found were not.

Q. Did you make any further investigations along that line or any other line of the grant that would verify your former conclusion, as testified in this case?

Counsel for complainant object to the question as leading.

A. I went to a small stake on the line I had found blazed, being about nine and one-half chains south of the north line of section 21, located on the west side of the grassy pond, which was referred to in the United States field notes as being 51 chains east of the southwest corner of the grant. My measurement of that pond would be 51.90 chains, at which point I had left an insignificant stake in the ground on my previous survey. The pond was surrounded by a bank covered with saw palmettos—25 to 30 feet in width between this small stake and the water's edge and the stake was very nearly four feet above the water surface level. I set my compass at north and measured 280 feet. At 260 feet I found indications of a line on pine trees—they having
900 been marked, but as I said before, they appeared to be but from ten to fifteen years of age —not over fifteen; then I set my compass 280 feet north and measured out east 280 feet to the saw palmetto fringe bordering the pond—about 25 or 30 feet from the water's edge, which would indicate—5.35 chains south of the section line—that the distance along that line from the west line of the grant, would be 56 chains, at least, to the highest possible water mark on the grass pond, being four to five chains longer than the field notes called for.

Q. Mr. Howard, have you made since your last testimony any further or other investigation with reference to any of the lines or measurements of the Theresa Rodriguez grant, that would throw any additional light upon the question, as to whether or not your opinion formerly expressed with reference to some of the distances of the official government map referred to by you at a former hearing, were office calculations, or were not correct?

A. I made a comparison of the government plats and field

notes with reference to the north line of the grant, and the west line of the grant and the length of the section lines abutting, which satisfied me that in all probability they were faithfully given by the surveyor, who located the grant lines, so far as he could judge by field work, but as I said before the distance given on this plat of the grant from the south line of the grant to the south line of the sections which it crossed, conclusively shows to me that these measurements could not be field measurements but calculated field measurements, undoubtedly done in the office.

901 Counsel for complainant object to the evidence because the witness is not sufficiently qualified to overturn the field notes and the official United States plats and their measurements.

Q. State, Mr. Howard, what there was about those measurements on the south line of the grant that convinces you of this opinion.

Counsel for complainant object to the question because the witness has not shown that he is qualified to give testimony along this line.

A. The west line of section 21 from the grant line south to the south line of the section is put down at 74.55 chains in length. The next section line east is 74.60 chains; the next one is 74.65 chains; the next one east 74.70 chains; and the last one that intersects the grant line is 74.80 chains. I have never found in my experience that distances of that length would so agree exactly, five lengths increase to each line. The measurements connected with the grant all excepting in this—and these few lines mentioned, are rather more than usual variable, indicating that it was the first survey of that township, and also indicates somewhat loose chains. The measurements made by the grant surveyor almost always gave a lower figure than that given by previous government surveyors across a section and both of them lower figures that we found on the ground between government stakes.

Counsel for complainant object to the testimony because the witness has not shown that he is sufficiently qualified to

testify as to the incorrectness of figures given in the United States field notes and plats.

902 Q. Would the measurements of the section lines along the north and west lines of the section of the grant show that same exact distance between section lines?

Counsel for complainant object to the question as irrelevant —that that this witness has not shown that he ever had anything to do with the north or west lines of the grant or has any knowledge of them; that same is not in rebuttal of any testimony ever given; that it is immaterial.

A. I didn't make this examination of the section lines on the grant, but this examination was of the government plats and the comparison of the same for the purpose of ascertaining the correctness of the figures given by the grant surveyor compared with the previous surveyor.

Counsel for complainant move to strike out the testimony as it tends to impeach the testimony already given by the defendants.

Q. Did your investigation since your former testimony cover any further matters concerning this grant or in any way tend to confirm your opinion as to the proper location of the grant, the south line of the grant, as you heretofore testified to or as to the incorrectness of complainants' claim as to where the south grant line is located?

A. During my first survey I was once or twice impressed with the possibility that the south grant line might be 5.35 chains by some indications, but the more carefully I examined I was satisfied that the old stake at the southwest corner marked "XR" was the original stake and in the location where it had been originally placed and after starting from that point and examining the ground northward on that line more carefully and examining the shores of the grass pond referred to and the neighborhood of the sulphur spring, I feel

903 positive that that line run by us and decided on as the true line of the grant was the original located line. The stake was at a bare tree which the field notes called for north 60 degrees east and sixty links. At that time I was

a little doubtful that it was 60 feet distance, thinking it might have been moved, thinking it didn't correspond exactly with what the field notes stated, but I found it impossible to believe that it had been moved because of my further investigations with regard to the crossing of the pond and the crossing of the east line of section 21 by the line from it due east. The survey must rest upon those points, even if the distanese given in the field notes prove to be defective.

Cross-Examination.

By Mr. Jones:

Q. Mr. Howard, I believe you stated that you didn't find indications of the corner or bearing stumps at 5.35 chains north of the south line of section 20?

A. Yes, sir.

Q. How many bearing stumps did you look for at that point?

A. Two.

Q. Are two called for in the field notes?

A. They are.

Q. What field notes?

A. United States field notes of the grant.

Q. I believe you testified to the markings on a post now at what you claim to be the southwest corner of the grant. How was it marked?

A. It had an "X" and underneath it the letter "R".

Q. Is that post distinctly marked or badly?

A. Badly, but still not so much but what it could be the original post.

904 Q. Do you still claim it to be the original post of the government sixty years ago?

A. Yes, sir.

Q. Are you as positive of the rest of the testimony as you are of that fact?

A. I am more positive than some of it.

Q. You are quite positive that it is the original stake?

A. Yes, sir.

Q. You examined the post pretty carefully, did you?

A. Yes, sir.

Q. When you were running the line starting at 5.35 chains

south of the north line of section 20 going east what variation did you use?

A. I used about 1 1/2 degrees going east.

Q. Did you notice what variation was used and stated in the field notes?

A. I think the field notes—the one copy that I used stated "no variation given".

Q. But if it was stated four and one-half degrees, then you disregarded the variation stated in the field notes?

A. I used the variation that was figured from my running the east line of section twenty-one between the government stakes.

Q. Where did you get that variation from?

A. From running lines.

Q. Was not that section line run at a different time from running the grant line?

A. It was.

Q. So you disregarded the field notes and took your variation from the section line of 21?

905 A. My recollection is that I used the variation that I found on the ground.

Q. Did you use the variation given in the field notes?

Counsel for defendant objects to the question on the ground that the field notes used produce no evidence, that they give no variation; that the witness has plainly answered the question.

A. I did not. I do not think it was given?

Q. Speaking of the grass pond which you have testified to, did you examine the north part of that pond?

A. I did.

Q. Did you examine that portion of that territory beyond the north water line of that pond as it now exists?

A. I did.

Q. Did you or not find indications of dry land without palmettos on it?

A. I did.

Q. Please state if in running that line east 5.35 chains south of the north line of section 20, running east, whether or not you come across a small black stake set in the ground about twenty chains west of the east line of section 21, upon that

line," marked the northwest corner of the Drawdey homestead?

A. I didn't find it.

Q. Is the line upon which you say you did not find any old marked trees the line you testified you ran through there?

A. Yes, sir.

Q. You stated that you set a post on the east line
906 of section 21, two chains north of the sulphur spring, is that so?

A. Yes, sir.

Q. How far is that post from the northeast corner of section 21?

A. It is 9 chains 11 links.

Q. How far going east through that post on what you claim to be the grant line is it to the waters' edge?

A. Eighty-nine feet.

Q. Across the creek?

A. Across the creek it is about one hundred feet.

Q. If that line crosses the creek there, will it cross it again going east?

Counsel for defendant object to the question on the ground that the witness has not testified in direct testimony that he ran that line any further than that point.

A. It will not within a long distance—as far as I could see.

Q. What do you call a long distance under these circumstances?

A. I looked across there to the hammock and estimated that from that point to the hammock would be in the neighborhood of from ten to twelve chains.

Q. Was there a creek flowing in that direction?

A. The creek was not visible there. At 280 feet north on the section line, from which point I gazed, that creek was plainly visible over the grant, say from five to six hundred feet distance.

Q. At the point you set up that post on the east line of section 21, 9.11 chains south of the northeast corner, was that, or was it not on the edge of a branch?

A. I would not call it a branch. I would say it was—I would say that it was on the north edge of a sink

907 hole on which the creek was located. There was no branch or creek of water flowing at that point.

Q. I believe you said that it was 89 feet west of the branch?

A. Yes, sir.

Q. Did you or not note a small pond southeast of the cabin which we have been speaking about?

A. I did.

Q. In what direction would the overflow of the water go from that pond?

Counsel for defendant object to the question on the ground that it is immaterial, irrelevant, that there is no showing of any overflows on the pond; that the question assumes facts not proven.

A. I simply said I don't know, but my impression is that it flows north.

Q. Is not the slope of that line north and to the east from the point which it rises?

A. It rises towards the east.

Q. Any indications north?

A. No indications observed.

Q. Is it not true that the northeast corner of section 21 is located where the hammock trends from the north towards the south?

A. I don't exactly understand the question, but my knowledge of the ground would be that the definite line of the hammock was direct east and west from the stake.

Q. Did you or not observe sharp impressions in the bank of the sulphur spring, running about 175 or 200 feet north of the stake that you set up as the point of intersection?

A. No, sir.

908 Q. Did you examine the ground through all the grant?

A. Went over it.

Q. You didn't observe that there were sharp depressions there?

A. I went along on the 5.35 line east as far as the creek.

Q. I mean before you got to that line—on the west bank of the sulphur spring.

A. I noticed none running into it. There are outcropping rocks.

Q. But you did no work on the north line of this grant?

A. No, sir.

Q. You have testified that you believe from the exact differences in the lines as laid down in the field notes, that this must have been office work?

A. Yes, with regard to those lines.

Q. Do you still hold to the opinion that 5.35 chain line, claimed as the south line of the grant, was never run on the ground?

A. My impression was that the distance had simply been calculated after they got back, located by the spring and the spring ran by the point at which they reached the pond and by the location of the southwest corner stake, and that through some mistake or carelessness those measurements were largely calculated from a single erroneous figure and were not measured on the ground.

Q. That line claimed to be 5.35 chains south of the north line of section 21, was not measured on the ground, was that your opinion?

A. It was not located by the surveyor, because it will not meet the conditions that he gives.

909 Q. When were steel tapes first used?

A. I will say 25 or 30 years ago.

Q. How are Spanish grants numbered?

A. Numbered by United States survey and by numbers in addition to the thirty-six sections of each township.

Q. Mr. Howard, I believe you stated that you did work previously for the Wilson Cypress Company?

A. Yes, sir.

Q. How many years were you in their employ?

A. One year.

Q. Did you do any other work for them off and on?

A. At times.

Q. Mr. Howard, if the government field notes and the government plats are correct, would the southwest corner of the grant be 9.57 chains south of the north line of section 20?

A. By examination of the grant I am satisfied of either one or the other—that the indications are that some are correct and some are mistaken.

Q. I repeat my question. If the government plats and

field notes are correct, would the southwest corner of the grant be 9 chains and 57 links south of the north line of section 20?

A. No, sir.

Re-Direct.

By Mr. Cooper:

Q. In stating that in replying to the last question asked you, that the plats and field notes of the United States are incorrect if the south line of the grant is 9 chains 57 links south of the southeast corner of section 20, do you mean that they are in all respects necessarily incorrect?

A. I do not.

910 Q. Explain what you mean?

A. That when a certain figure conflicts with other statements in the field notes given, that it is a matter of investigation and judgment to find out which is correct and there are so many points that indicate that the measurement 5.35 chains is incorrect, that I felt it necessary to so judge.

Q. Mr. Howard, the substance of your conclusion as a matter of fact in this matter is that the government surveyors actually placed the southwest corner post at a point nine and a fraction chains south of the north line of section 20 and 21 but never did place any post or run a line as the south boundary line of the grant at a point 5.35 chains south of the same line, although the plat of the United States Government and the field notes state that distance?

Counsel for complainant object to the question on the ground that it is absolutely leading and places in the mouth of the witness the answer desired by counsel.

A. That is my judgment.

Complainants move to strike out the foregoing testimony of the witness on the ground as before stated at the outset of his examination, as though repeated here, and upon further ground that his testimony seeks to contradict and impeach the testimony and other evidence already introduced and admitted in this case by the defendants.

Mr. L. J. OWENS testified as follows on behalf of the defendants:

Complainants object to the introduction of the testimony of this witness on the same grounds as previously
911 stated on the opening of this examination of witnesses by defendants, as if repeated in full at this point.

Q. Mr. Owens, will you state whether you are the same L. J. Owens who formerly testified on this case in a recent hearing at Palatka with reference to surveys along the south line of the Rodriguez grant?

A. Yes, sir; I am.

Q. Have you made any investigation or surveys along that south line of the Rodriguez grant since the last testimony given by you?

A. I have.

Q. Will you please state what this investigation consisted of—what you did?

A. I was with Mr. Beasley and Mr. Ginn and assisted in carrying one end of the chain along a line across section 21, 5.35 chains south of the north line of section 21.

Q. You carried the chain while Mr. Ginn and Mr. Beasley made the survey?

A. I was with them.

Q. Assisted in chaining?

A. Yes, sir.

Q. Do you know, then, where they run that line?

A. I do.

Q. Was that a recent survey?

A. Yes, sir.

Q. How long ago?

A. The two last days of March, about the 28th and 29th.

Q. Did you make any examination there, Mr. Owens, with reference to whether or not the timber had all been cut off of the southwest part of the grant, north of that line they
ran, in the southwest corner of the grant, as com-
912 plainants in this case claim it to be?

Counsel for complainants object to the question on the ground that it assumes facts not in evidence; that it is irrele-

vant, and in cross of no question or in rebuttal of any previous testimony, and immaterial.

A. I noticed very few stumps to indicate that any large percent of the timber had been cut and a good many trees are standing now.

Q. Mr. Owens, did you make any investigation as to the number of trees along this line, which you say Mr. Beasley and Mr. Ginn ran.

A. I did.

Q. State whether or not you made such investigation on the last day of March—Friday.

A. Yes, sir.

Q. State whether you found any trees along that line.

A. I did. I found in going over the line from the west line of the grant east, in going about 3,000 feet, and I believe a few lings [links] over, I found thirty-three trees. Some of the 33 standing on the line and none of the 33 standing more than 8 feet from the line, varying from 12 to 20 inches in diameter. I looked at these trees for government marks to ascertain if I could find or detect any ax marks as of a surveyed line made at any time and found no such marks.

Q. Did you make any memorandum at any time with reference to the number and sizes of these trees?

A. I did.

Q. When?

A. On Friday, the last day of March.

Q. Have you that memorandum with you?

913 A. Yes, sir. There is one tree on that I am not testifying to.

Q. Was it correct at that time?

A. Yes, sir.

Q. Is it correct now?

A. Yes, sir.

Q. Have you altered or changed that memorandum?

A. I have not.

Q. Mr. Owens, what does that purport to be? What figures?

A. The first column refers to the distance from the beginning of the west end of the line that Mr. Beasley and Mr. Ginn ran, beginning at the west line of the grant and running east.

Counsel for complainant object to the testimony from a memorandum as same has not been sufficiently identified and is not in cross of previous examination or rebuttal of previous statements.

Q. What does the second column refer to?
A. The diameter of the trees.
Q. You ascertained those measurements?
A. I did. I measured every one.
Q. What does the next column refer to?
A. The distance from the long line run by Ginn and Beasley.
Q. You ascertained those measurements.
A. Yes, sir; by measurements.

Counsel for complainant object to further testimony because before the examination he stated that he had an inaccuracy on the paper and he seeks to correct same at this time.

Q. Mr. Owens, state what the inaccuracy refers to.
A. It refers to one tree that is on that list but it is only 12 inches in diameter and I meant for it not to count.

914 Q. Is that tree mentioned on that list?

A. It is. I said from 13 to 20 inches. That doesn't include that 12-inch tree. I didn't mean for my statement to include that.

Q. These these trees are from 12 to 20 inches?

A. There are 34 trees mentioned on that paper in all. I didn't include in my statement the 12-inch tree. I found 34 as you will find on the list, which will make the trees from 12 to 20 inches in diameter.

Q. The correction, as I understand it, Mr. Owens, is that the trees instead of being from 13 inches to 20 inches in diameter are from 12 to 20 inches in diameter and also that instead of being 33 trees there are 34 trees?

A. Yes, sir.

Q. Then this list shows the correct number of trees, the diameter, the distances from the line and the distances on the line from the west end as they are there?

A. It does.

Defendants offer this paper in evidence.

Counsel for complainant object to the introduction of the paper in evidence, that witness has already testified there should be a correction in it, that it is not properly identified, irrelevant, not in cross of any testimony given in the cause.

Filed in evidence as Defendant's Exhibit ....

Q. Mr. Owens, has that paper been in your possession ever since you had it—ever since you made your memorandum?

A. It has.

Q. Did you make any further investigation along the line run by Beasley and Ginn?

A. I did.

Q. What was that.

A. I continued investigating the line across the entire section 21, looking at every tree on the line or close to
915 the line on the line that Beasley and Ginn ran, for marks, to see if it had ever been a surveyed line. At that point I found nothing to by any means resemble a surveyed line or marks.

Q. Mr. Owens, how far did you go on that line?

A. On that east line I went to the east line of section 21.

Q. Did you make any measurements along that line of any kind, since your last testimony?

A. I did.

Q. What were they?

A. I measured to ascertain the position of the grass pond claimed on the field notes and to ascertain the width of it and the distance across the pond at the point where Mr. Howard and Mr. Moorehead and myself ran a line for the south line of the grant a short time ago—a little over a month, to ascertain how the distance compared with the field notes of the survey of the Rodriguez grant. I found it to be 5 chains and 57 links across the water of same at that point.

Q. Are you referring to the water now in the pond?

A. Yes, sir.

Q. Are you referring to the line now 5.35 chains south of the north line of section 21 or the line 9.57 chains.

A. The line started at the southwest corner of the grant, 9 chains 57 links south of the north line of section 20.

Q. Did you make any further investigation?

A. Yes, sir.

Q. What did you do?

A. I measured across the water at a point where Mr. Beasley and Ginn's lines crossed, the end of this pond at 5.35 chains south of the north line of section 21, and found it to be 2.18 chains across the water at this point of meas-

916 urement, east and west.

Q. Did you make and measurement across that pond from the palmetto border of the pond, at the point where Mr. Beasley and Ginn ran across the pond?

A. I ascertained in chaining, but did not keep the chaining from the palmetto to the east edge of the prairie to the palmetto on the west edge of the pond.

Q. Do you know what the distance was? Do you recollect?

A. I did not keep the minutes of the whole distance.

Q. What other investigation did you make on the Beasley and Ginn line?

A. I investigated some blazes which seemed to be running north and south, just east of the branch, just west of this pond between this pond and the branch, to see if I could detect what they were put there for. Of blazes, I found two on one tree, one on the north side and one on the south side. I tried to follow them up to see where they led to and I found one blaze north of this line—quite a distance, possibly 50 yards. They being old blazes I took them to be some old hauling road.

Q. Did you make any further investigation along this line?

A. None that I remember just now.

Q. Did you make any further investigation along the grant line formerly testified to by you as being the south line of the grant?

A. I did.

Q. What investigation did you make?

A. I began in section of our south grant line. This grant line ran by G. H. Moro and myself to the east line of section 21 and continued this line to the southeast corner of the grant.

917 Q. What did you find along this line?

A. The continuation of that line struck two chains twelve links north of the old grant line that I found near the southeast corner of the grant?

Q. What are you referring to by the old grant line?

A. The old line originally ran, the old marked line, the blazed line.

Q. Did that line go to the post for the southeast corner of the grant?

A. It did.

Q. Did you find the post there?

A. I did.

Q. At what distance was that post from the section line at that point?

A. 6 chains 82 lengths south of the line between section 18 and 19, township 19, range 29.

Counsel object to the testimony of this witness and move to strike out the last two questions and answers; that it is not matter in rebuttal of anything before introduced in this cause; that same is irrelevant, immaterial and improper for introduction at this point.

Q. What appeared to be the age of that post as near as you could determine?

Counsel for complainant make the same objection as last above stated.

A. It was a very old post—I cannot say how old, but must have been more than 40 years old.

Counsel for complainant object to question and answer, and move to strike out the testimony on the ground that the witness has not shown himself to be qualified to judge the age of these matters?

918 Q. Mr. Owen, did you make any investigation between that old grant post at the southeast corner of the grant and the north section line, which you have just mentioned for any other post or stake that might be the southeast corner post of the grant?

Counsel for complainant make the same objection as last above stated.

A. I did.

Q. Did you find any post or stake?
A. I did.

Counsel for complainant make the same objection and move to strike out the answer.

Q. Did you make any investigation between the grant line as you there found it at 6 chains 80 links and the north line of the section last described, for any other blazed line?
A. I did.

Counsel for complainant make the same objection.

Q. Did you find any blazes that yould show that there might be a grant line north of the grant line you have described?
A. I did.

Counsel for complainant make the same objection, that the witness has not shown himself to be competent to testify in such matters.

Q. Mr. Owens, where the line which you ran across the east line of section 21 and continues on east, what is the nature of the land there?
A. It is mostly cabbage swamp, cabbage, oak and some pine.
Q. Did you make any further investigation through that swamp to see if there were any variations along that line you ran?

919 Counsel for complainant object to the question as witness has not shown himself competent to testify on such matter.

A. I did.
Q. What did you find?
A. I found some blazes south of the line that I ran.
Q. What appeared to be the age of those blazes?

Counsel for complainant further object on the same ground

and because it is new matter, not rebuttal nor surrebuttal testimony in this case.

A. They appeared to be old enough for the original line of the grant.

Counsel for complainant make the same objection and move to strike out the testimony as the witness has not shown himself to be qualified to express an opinion.

Q. Mr. Owens, did I understand you to testify that the line which you ran came in north of the line which you state ran west from the southeast corner stake of the grant?

A. Yes, sir.

Counsel for complainant make the same objection as above.

Q. Were there marks, natural marks, which you found in running this line from the east line of section 21 that served as any check or guide, according to the field notes?

Counsel for complainant object to the question as leading and immaterial.

A. Yes, I found Baygall as described in the field notes of the grant.

Q. How was that Baygall located with reference to this line?

A. This line with the old blazes on it ran through this Baygall.

920 Q. Did you make any examination to see if there were or not any other Baygalls in that vicinity?

A. I did.

Q. Were there any?

A. There were none separate and distinct from the main swamps except this one.

Q. Mr. Owens, have you in your possession here any of the blazes and marks of any of the trees in the Rodriguez grant?

Counsel for complainant object to the question on the ground that it puts into the mouth of the witness a conclusion.

this being a disputed line and drawing a conclusion of fact and law, unwarranted by conditions.

A. I have.
Q. Mr. Owens, will you produce those chips, please?

(Witness hands chip marked Number 1.)

Q. Where did you get that chip?
A. I got it just north of the southwest corner of the Rodriguez grant, at a point south of a point 5 chains 35 links south of the north line of section 20.
Q. Mr. Owens, was this chip cut from a tree?
A. It was.
Q. Who cut it?
A. My son.
Q. In your presence?
A. In my presence.
Q. Where was that tree situated with reference to the line determined by yourself, Mr. Howard and Moorehead to be the south line of the grant?

Counsel for complainant object to the question as last above stated.

A. I will have to refer to my notes. I have already stated that it was between line 5.35 and the southwest corner of the grant.

921 Counsel for complainant object to the witness testifying and moves to strike out the testimony, as it is a conclusion of facts as to what is the southwest corner of the grant.

Q. Mr. Owens, where was that tree located with reference to the west line of the grant?
A. 5.63 chains south of the north line of Section 20, about one foot.

Counsel for complainant further object to the witness testifying to unidentified memorandum?

Q. Mr. Owens, have you the notes that you had at the time you got this chip?

A. I have.

Q. When were those notes made?

A. The 29th day of March, this year.

Q. Who made them.

A. I made them.

Q. Have they been in your possession ever since?

A. Ever since.

Q. Have they been altered.

A. No, sir.

Q. Did you know at the time they were correct?

A. I did.

Q. Do you at the present time think they are?

A. I do.

Q. Mr. Owens, are these notes from which you have testified with reference to this chip, the only ones?

A. They are.

Counsel for defendants offer this paper in evidence, being the notes referred to by witness who just testified to the identity.

922 Counsel for complainant object to the introduction of the paper as it seems to be a fragmentary piece of paper ragged on the edge and unintelligible in its contents and further as an effort to introduce as positive testimony a conclusion of facts as to what consists of facts as to what is the grant corner, and further that same is immaterial and irrelevant; that same is new matter and not proper to be introduced at this time, that same is not rebuttal nor surrebuttal.

Filed in evidence as Defendants Exhibit ....

Q. Mr. Owens, will you state what this sappy place in this tree in your opinion is and how it came to be in that tree?

Counsel for complainant object to the witness testifying from a block of [or] blocks of wood, because witness is not qualified to give an opinion on such matters.

A. In my opinion it is an ax mark made at the time of making the original survey of this grant.

Counsel for complainant object to the testimony as the witness is not qualified to give an expert opinion.

Q. In your experience or knowledge is that the way that a blazed pine tree will grow over where it has been blazed by an ax.

A. Yes, sir.

Q. How did you know from the exterior of that tree that it had been blazed and grown over?

A. By a slight enlargement and being within one foot of the line that I found and considered to be the west line of the grant.

Q. Mr. Owens, what would you say, according to your best judgment and opinion, the age of that blaze is?

A. As near as I can arrive at it from the grains of the wood, it appears to be about 60 years of age.

923 Defendants offer this block in evidence.

Counsel for complainant object to the last answer of the witness, being purely the opinion of the witness, object to the introduction of the wood, that same is irrelevant and not in rebuttal of anything previously testified to.

Filed in evidence as Defendant's Exhibit ....

Q. Mr. Owens, how do the other blazes on the west line of the grant appear as compared with this blaze in this chip?

Counsel for complainant object to the question as the conditions are not show [shown] to be the same, that witness is not qualified to make such comparison nor is the testimony in rebuttal or surrebuttal.

A. In my opinion they are of the same age, as a great many other along the west line and south line of the grant.

(Witness hands chip marked Exhibit #2 and asked to state where that chip came from, if he knows)

A. It came from the grant line at a point 6.57 chains south from the same north line of Section 20 on grant line.

Q. On what grant line?

A. On the west line of the Rodriguez Grant.

Q. Did you see that chip cut out?

A. I did.

Q. Is that the same kind of a blaze as the other, in your opinion?

A. Yes, sir.

Q. As to age?

A. It seems to be the same age.

Counsel for complainant object to the testimony, as it is purely the opinion of the witness.

Q. Is that sap mark in the middle caused by the same thing as the other chip?

A. Yes, sir.

924 Counsel for defendants offer this chip marked Number Two in evidence.

Filed in evidence as Defendant's Exhibit ....
Witness handed chip marked Number Three.

Q. State where that came from?

Counsel for complainant make the same objection.

A. From a point on the south grant line 15 chains and 88 links east of the old corner, marked "XR." standing for the southwest corner of the grant.

Q. How was that chip located with reference to the line used by yourself, Mr. Howard and Mr. Moorehead, as the south line of the grant.

A. Two feet south of this line.

Q. Was it in such a position as to indicate that it was one of the blazes of that line?

Counsel for complainant object to the question as purely leading—endeavoring to place into the mouth of the witness the answer desired.

A. It was.

Q. Mr. Owens, in your opinion, what is the age of that blaze?

A. It appears to be the same age as the other two.

Q. Was it cut from a standing tree?

A. It was.

Q. Were the other two cut from standing trees.

A. They were.

Counsel for defendants offer Chip Number 3 in evidence.

Counsel for complainant object, on the same grounds as the objections to the other chips were based.

(Witness handed Chip Number 4 and asked to state where it came from).

Filed in evidence as Defendant's Exhibit ....

Counsel for complainants make the same objection.

A. It came from a tree on the south grant line as found at a point 303 chains 64 links east of the southwest corner of the grant.

925 Counsel for complainants object to the introduction of this testimony, as it is new matter and not in rebuttal of anything heretofore testified to.

Q. Will you state whether or not those two chips are part of the one and same tree?

A. They came from the same tree.

Q. Did you see it chipped out?

A. Yes, sir.

Q. Who marked these chips?

A. I think my son marked them in my presence.

Q. Did you make those notes?

A. I did.

Q. Is the sappy place in this chip caused from an ax blow on the side of the tree?

A. Undoubtedly.

Q. In your opinion, what is the age of that ax blaze, as near as you can arrive?

A. I take it, considering the outside appearance of the grains, I take it to be the same age of the other three [tree.]

Q. Was that blaze so located as to indicate to you from your experience, as heretofore testified to, that it was one of the blazes of the old surveyed grant line, as used by yourself, Mr. Howard and Mr. Moorehead.

Complainants' counsel object to the question, as strictly leading and improper.

A. It was.

Counsel for complainants move to strike out the answer, as it is based upon an improper question.

Counsel for defendants offer in evidence the two chips marked "Exhibit 4," being the same chip, one a piece of the other.

926 Counsel for complainants object to the introduction of the chips in evidence, on the same grounds as before stated.

Filed in evidence as Defendant's Exhibit ....

Q. Mr. Owens, you testified that in running the grant line that you determined it to be from the east line of Section 21 to this southeast corner of the grant, that that line as you ran it ran north of the corner post that you found and north of the old blazed grant line. Were there two blazed lines there?

A. No, sir.

Q. What do you mean?

A. I mean the transit line that I ran, preliminary as we would term it. I struck 2 chains and 18 links north. At this point I was north of the old grant line leading through this Baygall, plainly marked for the old grant line, originally.

Counsel for complainant object to the testimony because the same is not in rebuttal or surrebuttal, because the witness tries to dispute a line by declarative statements, furthermore the testimony as to the locality of the line is immaterial and irrelevant and is not brought out by anything in complainants' case. Counsel for complainants now move to strike out the testimony of the witness on the grounds stated in the motion

to strike the testimony of witness, Howard, and further because the witnesses' testimony is impeachment and a contradiction to documentary evidence heretofore admitted by the defendants.

Cross-Examination.

Q. Are you the same Mr. L. J. Owens who testified in this cause, originally, at Palatka, Florida, and Sanford?

A. Yes, sir.

Q. Are you still in the employ of the Wilson Cypress Company?

A. I am.

Q. How long did you state you had been in their
927 employ.

A. I don't quite remember. Six or eight years. I first worked for them more than fifteen years ago.

Q. Where?

A. At Cassia.

Q. Where do you now work for them?

A. At Palatka. Their headquarters are at Palatka.

Q. I believe you stated you were with Messrs. Beasley and Ginn on March 31?

A. No, sir.

Q. What day were you with them, then?

A. On the last Tuesday in March, whatever day of the month that was.

Q. On March 31, Friday?

A. No, sir; I didn't say so.

Q. How many days were you with them?

A. I was with them pretty nearly all day Tuesday and met up with them the following day—Wednesday—a few minutes on Wednesday.

Q. Please state whether or not the timber at the southwest corner of the grant is boxed for turpentine up to the line 5.35 below the north line of Section 20, extending east from there, say, one-quarter of a mile.

A. East from the west line of Section 21, along the south line of the grant it is boxed from the grant line to the north line of Section 21 for one-half mile, about.

Q. Is it customary in making surveys to mark every tree along the line?

A. Genereally, all the closest trees are marked where they are as close as eight, 10 or twelve feet, sometimes furthr.

Q. Do you state they are usually marked 10 or 12 feet along the line.

A. Sometimes as far as that and sometimes further.

Q. The blazed line that you are testifying to about, how many trees on the first quarter of a mile going east, are marked within eight feet of that line on each side.

928

A. On which side? Do you mean the south line of the grant?

A. [Q.] No. I don't refer to the south grant line, but the line which you claim as the south grant line.

A. First, on the line running east from the southwest corner of the grant, the first three thousand feet I counted twenty-four trees standing on it, they were blazed plainly as the original running out of the grant.

Q. I asked how many trees were blazed for eight feet on each side of that line going east?

A. I have not got the measurements on that line. I have to take it as a whole. Within three thousand feet I counted them for three thousand feet east from the southwest corner of the grant.

Q. Do you mean the southwest corner of what you denominate as the corner?

A. Yes; the old post for the southwest corner, marked "XR."

Q. Did you examine that post closely?

A. I thought I did.

Q. Is the rest of your testimony as accurate as the description of that post? I believe you have described it?

A. I have described an old post standing at the southwest corner of the grant with an "XR" on it.

Q. Is the balance of your testimony as accurate as your description of that post?

A. I have tried to give all of it accurately—one past [post] as accurate as the other. I have tried to make it so.

Q. You say you held the chain along with Mr. Beasley and Mr. Ginn.

929

A. With Mr. Beasley. He and I chained the north line across the north end of Section 21 at 5 chains 35 links south of the north line of Section 21.

Q. How often did you run that line?

A. I only chained one time.

Q. I have before me an exhibit filed in this case. Did you take these notes?

A. Yes, I did.

Q. When did you make them?

A. I made them on Friday following the Tuesday that Mr. Beasley and I chained that line.

Q. Did you go over that line again?

A. Two or three times after Mr. Beasley and I had chained it.

Q. You took these notes down at the time you and Mr. Beasley chained it?

A. I obtained that part of that line that those notes are on on the following Friday after the Tuesday, commencing measurements at the west end of Mr. Beasley's and Ginn's line, being the intersection of their line with the west line of the grant and measured east for three thousand or so feet.

Q. You took these notes as you went along with Mr. Beasley?

A. No, sir.

Q. Then, you walked over the line after it had been chained? Walked over it two or three times?

A. When chaining the whole line—once.

Q. Who was with you on Friday?

A. Mr. Boykin was with me.

Q. At what place did you find the post set up at
930 the northwest corner of the Drawdey homestead. What part of the line did you find there?

A. I don't remember ever finding a post at the northwest corner of the Drawdey homestead, unless I did at one time see a post set on the old grant line, which probably had been set for the northwest corner of the Drawdey homestead.

Q. That was on the line that you claimed was the grant line?

A. Yes; or just south of the line we claimed for the old grant line.

Q. When did you see that post.

A. It has been a month or so ago.

Q. You don't know what that post was there for?

A. I didn't measure. I don't know.

Q. That was the only post for the northwest corner of the homestead you saw.

Counsel for defendant object to the question, as there is no evidence to show what or where the Drawdey homestead is; that the witness knows nothing about where it is or that it has ever been surveyed.

A. If that is not the northwest corner of the grant I don't know where it is.

Q. I believe you said you continued across Section 21, and I understand that you saw nothing to resemble a survey or mark on the line at a distance of 5.35 chains south of the north line of Section 21?

A. I saw nothing in the way of old land marks to indicate that there had ever been a line run there for a surveyed line.

Q. You saw no line at 16 chains going east from
931 the intersection of the 5.35 chains point.

A. Nothing that I took to be a surveyed line marked.

Q. Did you see a burned stump at 31 chains going east upon that line.

A. Not that I made any note of.

Q. Did you see a marked tree at 35 chains going east?

A. Not that I saw to make a note of.

Q. Did you see a tree at 41 1/2 chains going east on that same line?

A. I did not.

Q. Did you see a tree at 51 1/2 chains going east, a blazed tree?

A. No; not with a survey mark.

Q. Did you see a survey mark at 79 1/2 chains going east?

A. No; not that I considered resembled an old survey.

Q. Did you see one at 84 1/4 chains going east?

A. No; not that I made note of.

Q. And you went over that line with Mr. Beasley?

A. I did.

Q. Did he call your attention to these trees?

A. No [Not] specially.

Q. He didn't ask you to take notes of these trees.

A. Not that I have any recollection of.

Q. Did you go east of the east line of Section 21 with Mr. Beasley and Mr. Ginn?

A. I did to 9 chains and 9 links—to the spring run.

Q. Did you go beyond the spring run?

A. No, sir.

Q. Did you go east on the line that you called the grant line of Section 21?

A. Yes, sir.

Q. At what point did you cross sulphur branch?

932 A. I can, by referring to my notes, tell.

Q. Did you put up a post along the east line of Section 21, at the intersection with what you called 21?

A. Mr. Howard did. He set it.

Q. He put it there?

A. He put it there, a temporary post.

Q. Was that at the edge of any branch?

A. It was on the edge of a hole.

Q. Was it in the edge of a branch?

A. No, sir.

Q. Going east, how far from that post was it to the water?

A. About one chain, I think.

Q. How far across the water.

A. About two chains.

Q. Was that a sulphur branch?

A. Yes, sir.

Q. The branch then was about a chain wide?

A. Nearly.

Q. That was the branch that came from sulphur spring along the east line of Section 21?

A. Yes, sir.

Q. After crossing that branch at that point, where did you cross it again?

A. Not on that line again.

Q. It only crosses that branch at one place.

A. Yes, sir.

Q. Does it cross any other branch going east from the east line of Section 21 for 10 chains?

A. No, sir.

Q. For fifteen chains?

A. No, sir.

Q. Did you wade across that pond on that line

933 that you have been testifying to 9.57 chains south of Section 21?

A. No, sir.

Q. How did you get the width of it?

A. I got at the width of it by offsetting.

Q. Did you offset to the north or south?

A. To the north.

Q. In offsetting to the north, didn't you pass over an ancient pond bottom that had no water in it?

A. No; not in going north from that point. Yes; in going north from the east edge of that pond you would.

Q. At the north of that pond, Mr. Owens, is there any portion of that land that is prairie?

A. There is to the northeast of that point.

Q. Did you not in your former testimony testify that a line at 5.35 chains south of the north line of Section Twenty-one would not cross that pond at all?

A. I testified that I stepped it and according to my stepping it it would not go through it.

Q. You went through water 2.18 and also through a small prairie there?

A. Yes; I ascertained that fact after chaining on there. As I stated before, I stepped it and from my stepping I do not think that it would go through any part of a lake or pond.

Q. I believe you stated you went to the southeast corner of the grant as you call it, and at that point was 6.82 chains south of the north line of Section 24?

A. No; I stated 18 or 19. The southwest corner of the grant I stated stands 6 chains and 82 links south of the line dividing Sections 18 and 19 of Township 19, south of Range 29, East.

Q. What is the condition of the line that starts
934 at 9.58 chains south of the north line of Section 20?

A. It is the termination of an old blazed grant line.

Q. On the west side of the grant.

A. It would intersect the east line of the grant, 2 chains and 18 links north of the southeast corner post standing there, with the line extended with the preliminary line, extended from the southwest corner of the grant. It would intersect the east line of the grant, 2 chains 18 links north

of the old corner post standing at the southeast corner of the grant.

Q. With the corner post standing at 6.82 chains south of the north line of 18.

A. Yes.

Q. What was with you when you run that line.

A. Mr. Griffin and my son.

Q. Is it not true, Mr. Owens, that there is a large number of blazes through the territory bordering below the north line of Section 21, Township 19, Range 28, scattered through the woods there—south.

A. At the territory south of the north line of Section 21 there are a few blazes at random through the woods.

Q. How many chains to this Baygall that you spoke of from the starting point at your alleged southwest corner of the grant.

A. By referring to my notes I can give you the exact location. Referring to my notes, it is 306 chains and 14 links east from the southwest corner of the grant that I struck this Baygall on the old grant line.

Q. I believe you testified that all four of the chips you cut out illustrated blazes of the same age?

A. They appeared to be of the same age.

Q. I believe you made these in running the com-
935 pass line and transit line?

A. I termed it a transit line. I flagged my line through and staked it there.

Q. Do you know of a small pond northeast of the shack or cabin which has been described in this proceeding, not very far from it—northeast of it?

A. Yes, sir.

Q. Does the land slope to the south there from that pond?

A. Not noticeable.

Q. Does it not slope to the northeast?

A. No, sir.

Q. Which way does it slope?

A. No particular slope.

Q. In what direction would an overflow of water go from that pond?

A. I didn't detect any outlet to it.

Q. Well, it could overflow. How would it flow?

A. I didn't take a level. It is scrub on the northeast of it—high scrub all around it.

Q. When you cross that high scrub ridge, does the territory rise towards the northeast or not?

A. It is a swamp north after you get 5 or 6 chains northeast of there.

Q. I believe you might answer whether it rises or falls intelligently. Please be kind enough to do so?

A. I cannot answer exactly as I didn't take a level. It is apparently about the same height. I do not know whether it would go north or not.

Q. Is the land on the south side of that pond lower or higher than the swamp?

A. It is higher than the swamp.

936 Q. Mr. Owens, if the plat of this grant issued by the government and the field notes of this grant issued by the government are correct, would the southwest corner of the grant be 9 chains and 57 links south of the north line of Section 28?

A. If the survey was as regular as they claim it to be, it would not.

Q. Then, if the government plat and field notes are correct, the southwest corner of the grant would not be 9 chains and 57 links south of the north line of Section 20, would it?

A. No, sir; the plats that I have seen, none of them give it as being 9 chains and 57 links south.

Q. Do you still testify that you saw no semblance of a blazed line at 5.35 chains south of the north line of Section 21, in running that line through there?

A. I saw no line to indicate a surveyed line for the south line of the grant at this point.

Q. You saw a surveyed line through there at that point?

A. When Mr. Beasley and Mr. Ginn made their line they didn't make any blazes, they simply ran a transit line and put down a few posts.

Q. Then, do I understand that no surveyed lines were blazed to indicate the grant line?

A. I saw a few blazes.

Q. Then you saw a line through there with ancient marks on it, did you?

A. I saw a few blazes at different points, not immediately on this line.

Q. Then when you say you saw lines through there indicating the south line of the grant, that is your opinion, is it not?

A. I saw no old blazes that had the appearance of being made for the south line of the grant along this new line of Mr. Beasley's and Mr. Ginn's.

Q. In your opinion?

937 A. I feel sure.

Q. Feel sure of what—your opinion?

A. I feel sure that I saw no blazes that were made for the south line of the grant along the line Mr. Beasley, Mr. Ginn and myself made.

Q. But you did see a blazed line through there?

A. No, sir; I did not.

.....L....

Counsel for complainant move to strike out the entire testimony of the witness, on the ground heretofore stated in the motion to strike out the testimony of the witness, Howard, and also on the same grounds that the motion was made to strike out the testimony of witness—at the beginning of the direct testimony.

Counsel for complainant in view of the fact that new matters was introduced at this hearing, and in view of the fact that complainant is entitled to the close, reserve the right to produce rebuttal testimony to the testimony introduced by the defendants at this hearing, either at some subsequent hearing or at the hearing of the cause.

* * * * * * * *

939 I, C. B. Robinson, Special Master, as aforesaid, do hereby certify that the foregoing pages embracing eight hundred and eleven pages of legal cap typewritten, constitute a true, full and correct report and transcript of all testimony submitted to and taken by me as special master in the case of Enrique del Pozo y Marcos, et al., vs. The Wilson Cypress Company, etc., and also all testimony taken by special examiners and notary public therein under agreements and stipulations as shown in this report and certified to me by said special examiners and notaries public and filed in the cause.

In witness whereof, I have hereunto set my hand and seal this the 22nd day of May, 1911.

[Seal]

C. B. ROBINSON,
Special Master.

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940 In the Circuit Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos, et al.,
vs.
Wilson Cypress Company.

To save the time and expense of a hearing before the master to make proof of the hereinafter described instrument, it is hereby agreed that the instrument in writing purporting to be a copy of the certificate of baptism of Lorenzo, whom said certificate names as the legitimate son of Genaro Garcia and Adela Pechardo, may be offered in evidence upon the affidavit of Eugene M. Sanchez with the same force and effect as if all the statements made by said Eugene M. Sanchez by his said affidavit had been given in a hearing before the master as his testimony in the matter by the said Eugene M. Sanchez duly sworn as a witness and so testifying before the master herein, the contents of said affidavit being open to all such objections as the same would be if given in testimony before the master, the said affidavit first to be submitted to defendants or their solicitors and their objections to the introduction of same in evidence to be noted in writing and attached thereto and filed with same as a part of the record in said cause.

JONES & JONES,
W. W. DEWHURST,
Solicitors for Complainants.
COOPER & COOPER,
F. E. HASKELL,
Solicitors for Defendants.

941 In the Circuit Court of the United States, Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos, et al.,

vs.

Wilson Cypress Company.

Counsel for defendant object to the testimony given in the affidavit of Eugene M. Sanchez, sworn to and subscribed before Edwin Plowman, notary public, on the 3rd day of June, A. D. 1910, which said affidavit is attached to these objections as follows:

That there has been no proper foundation laid for testimony; that the testimony is incompetent; that the testimony assumes facts which have not been proven; that the witness is not qualified to testify to the facts stated; that the testimony represents the conclusions of the witness and does not state facts justifying such conclusions and that the testimony is immaterial and irrelevant.

And counsel for defendant also objects to the admission in evidence of the baptismal certificate attached to said affidavit and offered in evidence with said affidavit, being the baptismal certificate of Lorenzo, the son of Genaro Garcia and Adela Pechardo, as follows:

Because there has been no proper foundation laid for the introduction of said certificate in evidence; that the testimony of Eugene M. Sanchez in his affidavit is incompetent; that the testimony of said Sanchez in said affidavit concerning said baptismal certificate does not show said Sanchez is qualified to testify to the facts concerning said certificate; that the alleged original record and the copy sought to be introduced in evidence have not been properly identified or authenticated and the testimony is immaterial and irrelevant, and the testimony represents the opinion and conclusions of the witness and does not show facts from which same are drawn

942 nor that the witness was competent to so testify.

These objections are made and filed with said affidavit and baptismal certificate in accordance with the agree-

ment of counsel for the respective parties herein heretofore made and to said affidavit and certificate attached.

E. E. HASKELL,
COOPER & COOPER,
Solicitors for Defendant.

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

943 State of Florida,
St. Johns County.

Eugene M. Sanchez being duly sworn, says that he has carefully compared the attached instrument in writing, being a certificate of the baptism of Lorenzo therein certified to be the legitimate son of Genaro Garcia and Adela Pechardo with the original record of which the said instrument purports to be a copy, by having such original record read by the custodian thereof while this deponent followed such reading with said copy; that said original record was produced to deponent by the Rev. Pedro Arambarri, priest in charge of the parish church named in said instrument, and was an original record of said parish church duly and regularly kept for the record of baptisms celebrated by the priest in charge of said church, and deponent says that the said instrument is a true and correct copy of the original document as the same is recorded in said original church register.

EUGENE M. SANCHEZ.

Sworn to and subscribed before me, this 3rd day of June, A. D. 1910.

(Notarial Seal)

EDWIN PLOWMAN,
Notary Public.
My Commission Expires Oct. 13, 1912.

944 Presbitero Pedro Arambarri,

Cura Parroco de la Yglesia de Cermino del Espritu Santo de la Habana Certificio: que en el Libro 40 de Bautismos de Blancos folio treinta y seis vuetto y seis, se halla la partida siguiente:

Sabado catorce de Septiembre de mil ochocientos cieneuenta anos Yo B'r en Leyes D. Ant'o Abad Facenda, Ptro' Sac'n mor p'r S. M. con la Cura de Almas en esta Yg'a Parroquial

del Espiritu Santo de la Habana bautice y puse los santos oleos a un nino q'e nacio el dia dies de Agosto 17th, hijo legitimo de D. Genarro Garcia y de D'a Adela Pichardo naturales de esta Cindad y vecinos de esta feligresia: abuelos fraternos D. Augustin y D'a Altagracia Marcos, maternos D. Estaban y D'a Dolores Armenteros: y en nino egerci las sacras ceremonial y preces y puse p'r nombre Lorenzo fuerou padrinos D. Pedro Garcia y D'a Dolores Morejon, les previne el parentesco espiritual y lo Ant Abad Facenda.....
Es conforme a su original. Habana veinte y cuatro de Mayo de mil novecientos diez.

PEDRO ARMBARRI.

(Here is a stamp bearing the words: "Eglesia Parroquial determino del Espiritu Santo de la Habana.")

* * * * * * * *

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945 DEFENDANT'S OBJECTIONS TO INTERROGATORIES PROPOUNDED BY PLAINTIFFS TO WITNESS, J. H. G. MARTIN.

In the Circuit Court of the United States for the Southern District of Florida, in Chancery.

Enrique del Pozo y Marcos, et als.,
vs.
Wilson Cypress Company.

946 1. The defendant objects to the third direct interrogatory as seeking evidence that is immaterial and irrelevant.

2. The defendant objects to the fourth direct interrogatory, as seeking evidence that is immaterial, irrelevant and not the best evidence, the matters inquired therein being matter of record.

3. The defendant objects to the fifth direct interrogatory, as seeking evidence that is immaterial and irrelevant and not the best evidence.

4. Defendant objects to the sixth direct interrogatory as seeking the conclusion or opinion of the witness in reference to his taking possession, and in reference to, by or on behalf of whom such possession was taken.

5. The defendant objects to the seventh direct interrogatory, as seeking evidence that is immaterial and irrelevant and not the best evidence.

E. E. HASKELL,
COOPER & COOPER,
Solicitors for Defendant.

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947 Interrogatories.

Interrogatories to be propounded to J. H. G. MARTIN, a witness produced and sworn and examined on the part of complainant who resides more than one hundred miles from any place where the Court is held, and beyond the jurisdiction thereof, to-wit, in the City of Washington, District of Columbia, whose testimony is material on their behalf, pursuant to due notice, a copy of which is hereto attached, to the solicitors of the defendant in this cause heretofore given:

First Interrogatory:
State your name, age, residence and occupation.

To the First Interrogatory the said J. H. G. Martin answers and says:
James H. G. Martin, age sixty-four years; residence, 1432 V St. Northwest, Washington, D. C., and am not engaged in any kind of business during the past seven years, as I have been resting and trying to recover my health.

Second Interrogatory:
State whether or not you were formerly in business in the City of Washington, as a member of the firm of Shelly & Martin, and if so, during what time and the nature of the business carried on.

To the Second Interrogatory, he answers and says:
I was from about 1893 to about 1906 a member of the firm

of Shelley & Martin and the business carried on was that of a law firm practicing before government departments and courts.

Third Interrogatory:

State whether or not about A. D. 1892 the firm of Shelley & Martin were employed by the complainants herein or some of them to prosecute the claims of the descendants of Teresa Rodriguez for a grant of land in the State of Florida, made to Miguel Marcos, described in the American State Papers, Volume 4, page 283 and 471, Duff Green edition, being Claim No. 22 of Report No. 3?

To the Third Interrogatory, he answers and says:

Said firm was so employed, but I think it was in 1893. I was not a part to the contract at that time.

948 Fourth Interrogatory:

Under date of June 26th, 1895, there was issued from the General Land Office of the United States, a patent for the lands confirmed to Teresa Rodriguez, her heirs and assigns and legal representatives, and therein described as Section 37 in Township 19, south of Range 28, East, and Section 41 of Township 19, south of Range 29, East; state whether or not the firm of Shelley & Martin were at that date the attorneys for the confirmees of this claim and then prosecuting the same before the General Land Office, Department of the Interior?

To the Fourth Interrogatory, he answers and says:

Yes; they were.

Fifth Interrogatory:

To whom was the patent referred to in the Fourt Interrogatory delivered?

To the Fifth Interrogatory, he answers and says:

It was delivered to Shelley & Martin and is held by us up to this day.

Sixth Interrogatory:

After the issuance of the patent referred to in the Fourth

Interrogatory, what, if anything, did you do in respect to taking possession of the lands in the said patent described, by or on behalf of the confirmees and when?

To the Sixth Interrogatory, he answers and says:

I personally went to the State of Florida and entered upon the premises and declared myself as agent and attorney of the owners. The patent was issued in 1895, I think, and I think it was in 1895 or 1896 that I went to Florida and took possession of the land. I employed a watchman and had him put up notices warning trespassers. I saw nobody else on the premises except those who went with me. I went to the Probate Court or to the office of the clerk of the Court, H. H. Duncan, and had the patent recorded, thence I went to Sanford, the home of the Colonization Company, F. H. Rand, manager, and tendered the money to pay all taxes or other legitimate expenses incurred, and he declined to accept the money, saying that he was not the principal but was authorized to act in his absence. I then returned to Washington, D. C.

Seventh Interrogatory:

What, if any, business dealings have you as the attorney for the complainants herein, had with the defendant?

949 To the Seventh Interrogatory, he answers and says:

I have had some little correspondence with Mr. Wilson, but I had no business dealings with the defendant as attorneys for the complainants. He was extremely anxious to obtain the cypress on this property, and he told me of this desire to purchase and wrote me letters.

Eighth Interrogatory:

Do you know or can you state or set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of your examination or the matter in question in this cause? If yes, set forth the same fully and at large in your answer.

To the Eighth Interrogatory, he answers and says:

I do not know of anything else, except that I wish to annex

to my testimony letter to Shelley & Martin, dated Feb. 20, 1896, signed by Henry S. Wilson; latter [letter] dated Feb. 10, 1908, to Shelley & Martin, signed Henry S. Wilson, and letter dated May 21st, 1898, to me signed by Henry S. Wilson.

The letters are hereto annexed, marked Exhibits "A," "B" and "C," respectively.

Cross-Interrogatories.

If in answer to the third direct interrogatory you state that the firm of Shelley & Martin were employed by any person or persons to prosecute the claim mentioned in the said interrogatory, please state precisely and exactly the names of the person or persons so employing the said firm of Shelley & Martin, and exactly when such employment took place and how the employment was made. State whether the same was in writing or correspondence or oral, and if in writing, attach said writings to your answer hereto. State fully the circumstances of the origin of said employment of the said firm of Shelley & Martin.

To the First Cross-Interrogatory, he answers and says:

Shelley & Martin were employed by Colonel Lewis Lay. Gurdon Wilcox came as a friend of Colonel Lay's and Wilcox brought Colonel Lay into relations with Shelley and afterwards with Shelley & Martin. The first employment was with General Shelley in 1893—the contract being made
950 with Shelley & Wilcox, October 13, 1893, or about that date. As far as my recollection goes the contract was made with General Shelley, first, but I do not remember whether it was in writing or oral. On account of my health I have not had an opportunity to see whether there any writings to attach. I have nothing further to state relative to the circumstances of the origin of said employment of Shelley & Martin.

2.

If in answer to the Fourth Interrogatory you state that the firm of Shelley & Martin were at the date referred to the attorneys of any person or persons prosecuting the claim referred to in the General Land Office, Department of the Interior, please state distinctly and exactly the names of such

persons for whom they were prosecuting such claim, and under what authority and if such authority is in writing, attach same to your answer, and state whether or not such representation of these persons in the General Land Office, Department of the Interior, is shown upon the records of that office in that department, and whether said records also show what was done in said office by said Shelley & Martin, in representing said parties.

To the Second Cross-Interrogatory, he answers and says:

We were prosecuting the claim as attorneys for the heirs at law of Teresa Rodriguez, on the authority of the power of attorney executed to Colonel Lewis Lay, a power of attorney that embraces everything, that is, it was as full and complete as any I ever saw, and is now of record in the Land Office, Interior Department, and for that reason I cannot attach it. The records of the General Land Office, Department of the Interior, ought to show what was done in said office by Shelley & Martin.

3.

If in answer to the Fifth Direct Interrogatory you state that the patent referred to was delivered to you or to the said firm of Shelley & Martin, state the exact date on which the same was so delivered and what disposition, if any, was made of the said patent and by what authority, and if in writing attach said writing showing such authority and disposition of said patent.

951 To the Third Cross-Interrogatory, he answers and says:

I cannot state the exact date, but it was about 1895. I still have the patent in my hands. Our clients requested us to hold the patent and have it to this day subject to their order. I am not clear in my recollection whether there was a written agreement or not giving authority to us to retain the patent, and my health has not permitted me to investigate it.

4.

If in answer to the Sixth Direct Interrogatory you state that you did anything in reference to taking possession of the

lands described in the patent, state the exact date or dates when you took such action?

To the Fourth Cross-Interrogatory, he answers and says:

I cannot state the time any more accurately that given in my answer to the direct interrogatories—it was some time in 1895 or 1896, I think.

5.

If in answer to the Sixth Interrogatory you state that you went upon the lands described in the patent or any of them, state exactly upon what portions of the land, if any, you went upon and how long you were on the lands and what you did on the lands?

To the Fifth Cross-Interrogatory, he answers and says:

I cannot possibly tell the exact direction in which I went, but I had a guide who piloted me and knew the tract. I think he lived on the line. I cannot say how long I was on the lands, but it was a number of days. I put up trespass warnings and employed a watchman.

6.

If in answer to the Sixth Interrogatory you state that you went upon the said lands described in said patent or any of them, at any time, state whether or not you found any persons upon the lands or any of them, or claiming to be in possession of same, and, if so, who were the said persons.

952 To the Sixth Cross-Interrogatory, he answers and says:

I found no persons on the land or claiming to be in possession of it.

7.

If in answer to the Sixth Interrogatory you state that you went upon the said lands or any of them described in said patent, or did anything on the said lands in respect to taking possession of same, state the exact date or dates when you so went upon said lands or took such action, and state whether of [or] not since that date when you first claim to have gone upon said lands you have ever been upon said lands, and, if so, when and what you did upon said lands?

To the Seventh Cross-Interrogatory, he answers and says:

I have not been on said lands since the first time already spoken of.

8.

If in answer to the Sixth Interrogatory you state that you did anything in reference to taking possession of the lands described in the patent, please state whether or not you acted through any other party or parties in Florida, and, if so, how and if by correspondence with such party or parties, please attach such correspondence?

To the Eighth Cross-Interrogatory, he answers and says:

I did not act through any other party or parties in Florida.

9.

If in answer to the Sixth Interrogatory you state you were acting by or on behalf of any other person or persons, state if any other persons were with you at the time you went on the lands or any of them, and if so, who they were and whether you communicated with said parties referred to in the said Sixth Direct Interrogatory before going on said lands and received any authority from said party or parties to represent them in going upon or taking or endeavoring to take possession of said lands, and if said communicaion or authority is in writing, please attach same to your answer?

953 To the Ninth Cross-Interrogatory, he answers and says:

I was not acting for any other persons except our clients, the confirmees of the patent. There was no one with me but the guide. I do not remember whether I communicated with them or not. I did need to do so because the power of attorney to Colonel Lay, under which we were acting, was ample.

10.

State whether you have ever been upon these lands since the first time that you went on them referred to in your answer to the sixth direct interrogatory and your answer to the ninth cross-interrogatory, and if so, when and what you did on the land?

To the tenth Cross-Interrogatory, he answers and says:
I have never been on the lands since the first time.

11.

If in answer to the seventh direct interrogatory you state that you have ever had any business dealings with the defendant, state whether or not those dealings were by correspondence or in what way they were had.

To the Eleventh Cross-Interrogatory, he answers and says:
I had some little correspondence with Mr. Wilson, but did not regard them as dealing, the letters appended in answer to the Eighth Direct Interrogatory will show the character of the dealings which may have transpired.

12.

State which of the officers of the defendant company, if any, you are personally acquainted with, and which ones, if any, you have never seen.

To the Twelfth Cross-Interrogatory, he answers and says:
Mr. Wilson is the only gentleman connected with the company I have ever met. I took him to be at the head of the company from the character of our conversation.

954 13.

If you state in answer to the Seventh Direct Interrogatory that you had any business dealings with defendant, state with whom you had such dealings, and if any of such dealings are in writing, attach such writings to your answer?

To the Thirteenth Cross-Interrogatory, he answers and says:
I have already fully answered this question.

14.

If in answer to the Seventh Direct Interrogatory you state you had any business dealings with defendant, state the exact date or dates of such dealings and where the same took place?

To the Fourteenth Cross-Interrogatory, he answers and says:
I have already answered this question.

J. H. G. MARTIN, Witness.

Answered under oath and subscribed before us, this 18th day of December, A. D. 1908.

J. BARRETT CARTER.
BENJ. MICOU,
Commissioners.

955 EXHIBIT "A."

J. Barrett Carter,
Benj. Micou,
Commissioners.

Palatka, Fla., Feb. 20/96.

Messrs. Shelley & Martin.
Rooms 56 & 57, Kellogg Bldg.,
No. 146 F St., N. W.,
Washington, D. C.

Gentlemen:

I have been told you represent some interest in Sec. 37, 19S, 28 E. Fla. The Teresa Rodriguez Grant, and that The Fla. Land & Col. Co. claim also to own and have possession of the land. If I could buy or trade for about 1600 acres out of Secs. 13, 14, 15 and 16 of the Grant so as to good title at general rate on price of Florida land, I would like to do so. What would you take for the title you represent for about 1600 acres, for a warranty also for a quit claim? and what are the merits of the claims to title of the contending paries?

Yours truly,

HENRY S. WILSON.

956 EXHIBIT "B."

J. Barrett Carter,
Benj. Micou,
Commissioners.
Wilson Cypress Company, Saw and Planing Mills.
Palatka, Fla., Feb. 10th, 1898.

Messrs. Stelley & Martin,
Rooms 55 to 57, Kellogg Building,
No. 1416 F. St., N. W.,
Washington, D. C.

Dear Sirs:

Have you settled the title question on the Teresa Rodriguez Grant in 19 S. 28 E., Lake County, Fla.? In which the Fla. Land & Colonization Co. claim title & hold possession?

I have a letter from you of Feb. 26/96, date stating your claims and from that suppose the matter would be settled by this time.

If settled, what would your price be for about 1600 acres out of the claim to be selected by 40 S. in the southeastern part of the Grant? If not settled, what would you sell the title of your claimant for to this amount of land or to the timber on the acreage?

Yours truly,
HENRY S. WILSON,
Palatka, Fla.

957 185104
B.
M. F. H.

Department of the Interior,

General Land Office.

Washington, D. C., April 1, 1907.

I hereby certify that the annexed copy of letters of Commissioner of Agriculture at Tallahassee, Fla., dated April 23, 1895, quit claim deed, letter dated May 2, 1895, to said Commissioner of Agriculture, and copy of patent to the claim of Teresa Rodrigues are true and literal exemplifications from the records and press-copy of letter in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington, on the day and year above written.

(Seal of U. S. General Land Office.)

C. W. SMITH,
Recorder of the General Land Office.

958 Agricultural Department, State of Florida.

Commissioner's Office.

Tallahassee, April 23rd, 1895.

Hon. Commissioner of the
General Land Office,
Washington, D. C.

Sir:

I have the honor to send herewith quit-claim to the lands requested in your letter "K" of the 8th, inst. Do you not want a quit-claim for the north part of Secs. 22, 23 and 24 same township and range?

Respectfully,
L. B. WOMBWELL,
Commissioner of Agriculture.

959 Know all men by these presents, whereas, the northwest quarter of the southeast quarter and the east half of the southwest quarter of Section Twelve (12), the west half of Section Thirteen (13) the southeast quarter of the northeast quarter and south half of Section Fourteen (14), the south half of the northeast quarter, the south half northwest quarter and the south half of Section (15), in Township Nineteen (19) south of Range Twenty-eight (28), East, Tallahassee Meridian, was selected by the agent of the State of Florida as inuring to said state under the provisions of the Act of Congress of September 28th, 1850, and was patented to said state as swamp and overflowed lands, March 14th, 1872, and May 19th, 1872, St. Augustine Series, Patents Nos. 9 and 10, respectively.

And whereas, from a letter from the Commissioner of the General Land Office at Washington, D. C., dated April 7th, 1895, it appears that the above described land is covered by the private land claim of Teresa Rodriguez;

And whereas, the State of Florida has never conveyed or attempted to convey the above described lands to any one;

And whereas, the Commissioner of the General Land Office has requested that the proper authorities of the State of Florida release and relinquish the above described lands to the United States of America for the purpose of clearing the title of the parties claiming said Teresa Rodriguez grant;

Now, therefore, in consideration of the premises, the undersigned, constituting the Board of Trustees of the Internal Improvement Fund of the State of Florida, who by virtue of Sections 428 and 429 of the Revised Statutes of said State of Florida, have the power to sell, transfer and dispose of all lands granted to said state under the provisions of the Act of Congress of September 28th, 1850; do hereby release and quit-claim unto the United States of America, all
960 the right, title and interest of the said State of Florida to the northwest quarter of the southeast quarter, and the east half of the southwest quarter of Section Twelve (12), the west half of Section Thirteen (13) the southeast quarter of the northeast quarter and the south half of Section Fourteen (14), the south half of the northeast quarter, the south half of the northwest quarter and the south half of Section Fifteen (15) in Township Nineteen (19) south of Range Twenty-eight (28), East, Tallahassee Meridian.

To have and to hold the same, the above described land, together with all the rights, privileges and immunities thereunto belonging unto the said United States of America, and its assigns forever.

In testimony whereof, the said trustees have hereunto subscribed their names and affixed their seals, and have caused the seal of "The Department of Agriculture of the State of Florida" to be hereunto affixed at the Capitol, in the City of Tallahassee, on this the 17th day of April, A. D. 1895.

(L. S.) H. L. MITCHELL.
Governor.

(L. S.) W. D. BLOXHAM.
Comptroller.

(L. S.) C. B. COLLINS.
Treasurer.

(L. S.) W. B. LAMAR.
Attorney General.

(L. S.) L. B. WOMBWELL.
(Seal) Commissioner of Agriculture.

961 Refer in reply to this initial:

"K"
S.W.S.
1895

48,970

W.O.C.
J. McP.
E.M.

Department of the Interior,

General Land Office,

Washington, D. C.

May 2, 1895.

Address only the
Commissioner of the General Land Office.

Commissioner of Agriculture,
Tallahassee, Florida.

Sir:

By office letter ("K") of April 8, 1895, addressed to you, relating to the private land claim of Teresa Rodrigues, in T. 19 S., R. 28 and 29 E., you were requested to procure from the proper state authorities a re-conveyance to the United States of certain lands, within the boundaries of said private claim, which had been inadvertently patented to the state as swamp land.

I am now in receipt of your letter of the 23d instant, in which you inclose a quit-claim deed, executed by the Board of Trustees of the Internal Improvement Fund of the State of Florida, who by virtue of the laws of the state are empowered to convey such lands, conveying to the United States the following tracts in T. 19 S., R. 28 E.:

NW 1/4 of SE 1/4 and E 1/2 of SW 1/4 Sec. 12.
W 1/2 " 13.
SE 1/4 of NE 1/4 and S 1/2 Sec. 14.
S 1/2 of NE 1/4 S 1/2 of NW 1/4 and S 1/2 Sec. 15.

Such deed is accepted as concluding any and all claim of the state to said lands, under the swamp-land grant, and the

proper annotations to that effect will be made on the records of this office.

Your promptness in the matter is duly appreciated.

Very respectfully,

EDW. A. BOWERS,

Acting Commissioner.

962 The United States of America.

To all to whom these presents shall come, Greeting:

Whereas it appears that the claim of Teresa Rodriguez for a tract of land in the State of Florida was reported as claim number twenty-two in report number three, of the Board of Commissioners for the adjustment of private land claims in East Florida, dated at St. Augustine, December thirty-first, eighteen hundred and twenty-five:

And whereas it appears that the aforesaid claim was confirmed, not to exceed a league square, by the act of Congress approved on the twenty-third day of May, eighteen hundred and twenty-eight, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida":

And whereas the aforesaid claim has been regularly surveyed and designated as section number thirty-seven in township nineteen South of range twenty-eight, and section forty-one in township nineteen south of range twenty-nine east, of the Principal Meridian, Florida, containing in the aggregate five thousand four hundred and eighty-six acres and forty-six hundredths of an acre as appears by a plat and description thereof on file in the General Land Office of the United States, duly authenticated and approved on June eighteenth, eighteen hundred and ninety-four, by the signature of W. H. Milton, Jr., surveyor general for the State of Florida; which said plat and descriptive notes are herein inserted and made a part of these presents, and are in the words and figures following to-wit:

"The above plat represents the survey of a tract of land "made in favor of Teresa Rodriguez in her claim to five thou-"sand, five hundred acres, entered as claim No. 22, in report "No. 3, (see State Papers vol. 4, page 283), and was recom-"mended to Congress for confirmation on the 16th day of "December, 1825, by the Board of Commissioners for the

"District of East Florida, appointed in pursuance of the act "of Congress of the 3d of March, 1823, entitled 'An act "amending and supplementary to the act for ascertaining "claims and titles to lands in (within) the Territory of Florida, "and to provide for the survey, and disposal of in public lands "in Florida, (see Statutes at Large, vol. 3, pages 709
963 "and 754); and was confirmed by the act of Congress "of the 8th of February, 1827, entitled 'An act to "provide for the confirmation and settlement of private land "claims in East Florida, and for other purposes. (See Statutes "at Large, vol. 4, page 202.)

"The following being a description of the survey taken from "the approved field notes of the survey thereof as executed "by M. A. Williams, a deputy surveyor, in the month of Jan- "uary, 1851, under his contract with Benjamin A. Putnam, "surveyor general of Florida, of the 19th of October, 1850.

Survey executed at a variation of 4 East.

"(For field notes see vol. 181, page 434.)

"Beginning at the N.W. corner of the claim at a pine marked "XR.

"Thence South on the West line of this survey 250 chains "x north line of Sec. 8, 76.80 chains east of its N.W. corner; "from said point a pine bears N. 60 W. 20 links, and a pine "bears S. 10 W. 15 links distant, 82.60 chains x north line of "section 17, 76.50 chains East from its N.W. corner from said "point a pine bears N. 20 E., 40 links distant. 97.00 chains "x branch, course west, 162.65 chains, x north line of Section "20, 7670 chains east from its N.W. corner. (Note: No de- "scription of a corner at this point in the field notes.) 168.00 "chains, the S.W. corner of this survey. From said corner a "pine, marked XR bears N. 60 E. 60 links distant.

"Thence East, on second and South line of this survey 3.80 "chains x west line of Section 21, 74.55 chains, north of its "S.W. corner. From said point a pine bears S. 69 W. 30 links, "and a pine bears S. 31 E. 20 links distant. 51.00 chains to "grass pond, 57.00 chains x grass pond, 83.80 chains x west line "Section 22 (in edge of branch of White Sulphur Spring). "74.60 chains north of its S.W. corner. (Note: No corner at "this point described in the field notes.) 85.00 chains, x branch "or creek, 98.00 chains, to hammock, 163.65 chains, x west "line of Section 23, 74.65 chains north from its S.W. corner; "from said point an iron tree bears S. 89 W. 15 links and an

"iron tree bears S. 30 E 25 links distant. 166.00 chains, x a
"branch, course north: 217.00 chains to a swamp.
964 "243.58 chains x west line Section 24, 74.70 chains
"north of its S.W. corner. From said point an ash
"bears S. 7 W. 77 links, and a maple bears S. 30 E. 20 links
"distant, 270.00 chains to hammock. 301 chains x hammock.
"304.00 chains to bay gall, 306.50 chains, x bay gall, 315.00
"chains to hammock, 323.40 chains x east line Section 24,
"(range line), 74.80 chains, north from its S.E. corner. From
"said point a cabbage bears S. 15 W. 30 links and a cabbage
"bears S. 28 E. 12 links distant. 327.00 chains (in Range 29
"East) the S.E. corner of this survey. (Note: No descrip-
"tion of corner in field notes.)

"Thence North, on the east line of this survey, 5.80 chains x
"north line of Section 19, 76.45 chains west from its N.E. cor-
"ner. From said point a myrtle bears N. 30 E. 15 links and a
"myrtle bears S. 26 E. 20 links distant. 13.00 chains to a deep
"creek. 14.00 chains x creek. 23.00 chains to scrub. 30.00
"chains to swamp. 35.00 chains to hammock. 55.00 chains x
"hammock. 60.00 chains to pine and cabbage. 65.00 chains
"x pine and cabbage. 78.00 chains to pine and cabbage. 86.00
"chains x north line section 18, 67.30 chains west from the
"line of Pedro Miranda's grant. From said point a pine bears
"N. 62 E., 50 links, and a pine bears S. 61 E. 45 links distant.
"104.00 chains to hammock. 125.00 chains x hammock. 166.06
"chains x north line of Section 7, 76.35 chains west from its
"N.E. corner. From said point a cabbage bears S. 30 E. 50
"links, and a cabbage bears N. 22 E., 30 links distant, 168.00
"chains, the N.E. corner of this survey. From said corner a
"pine bears N. 50 W. 26 links, marked XR.

"Thence West on the North line of this survey, 3.50 chains
"x west line of Section 6, (range line) 78.00 chains south of
"its N.W. corner. From said point a pine bears N. 25 E. 60
"links, and a pine bears N. 40 W. 70 links distant. 15.00
"chains (in Range 28 East) to swamp. 23.00 chains, x to
"hammock. 40.00 chains to pine and cabbage. 63.60 chains
"to burnt bay. 83.65 chains x west line of Section 1, T. 19,
"R. 28—77.89 chains south of its N.W. corner. (Note: No
"corner described at this point.) 97.00 chains to hammock.
"125.00 chains to creek. 125.60 chains x creek.
965 "163.81 chains x west line of Section 2, 77.65 chains
"South from its N.W. corner. From said point a

"water oak bears N. 28 W. 41 links, and a live oak bears N. "60 E. 17 links distant. 167.00 chains x hammock. 243.70 "chains x west line of section 3, 77.60 chains south of its N.W. "corner. (Note: No description of corner at this point in "the field notes.) (Last 80.00 chains scrubby.) 323.10 chains "x west line of Section 4, 77.85 chains South of its N.W. cor- "ner. From said point a pine bears N. 43 E. 10 links distant. "326.15 chains to N.W. corner of this survey and place of be- "ginning, being Section 37, Township 19 South of Range 28 "East, and Section 41, Township 19 South of Range 29 East, "of the principal meridian, Florida, containing five thousand, "four hundred and eighty-six acres and forty-six hundredths "of an acre.

"U. S. Surveyor-General's Office.

"Tallahassee, Florida, June 18th, 1894.

"Examined and approved.

"W. H. MILTON, JR.,

"Surveyor-General."

967 Now know ye, that the United States of America in consideration of the premises and pursuant to the provisions of section twenty-four hundred and forty-seven of the Revised Statutes of the United States, has given and granted and by these presents does give and grant unto the said Teresa Rodriguez, her heirs, assigns and legal representatives, the tract of land embraced and described in the foregoing survey; but with the stipulation that, in virtue of the provisions of the aforesaid section of the Revised Statutes of the United States, this patent "shall only operate as a relin-"quishment of title on the part of the United States, and shall "in no manner interfere with any valid adverse right to the "same land nor be construed to preclude a legal investigation "and decision by the proper judicial tribunal between adverse "claimants to the same land."

To have and to hold the said tract of land, with the appurtenances unto the said Teresa Rodriguez, her heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and ninety-five, and of the independence of the United States the one hundred and nineteenth.

By the President: GROVER CLEVELAND.

(L. S.) By M. McKEAN, Secretary.

L. Q. C. LAMAR,
Recorder of the General Land Office.

Recorded Vol. 479, pages 390 to 395, inclusive.

Indorsed: Received and filed in evidence as Complainants' Exhibits 1, 2, 3 & 4 this Nov. 30, 1908. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

968 M.L. 195584
B. 4-207r.

Department of the Interior,

General Land Office.

Washington, D. C., February 7, 1908.

I hereby certify that the annexed copies of letters dated Oct. 29, 1889, to J. Thomas Turner; April 3, 1890, to Messrs. Butt and Silver, Olando, Florida; May 9, 1891, Cecil G. Butt, and June 18, 1894, to the Commissioner General Land Office, from W. W. Milton, Jr., U. S. Surveyor General of Florida, are true and literal exemplifications from the press copies of letters and original in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

H. W. SANFORD.
Recorder of the General Land Office.

(Seal of the General Land Office of the United States.)

969 M. L. 195584 W.D.S.

D Department of the Interior, I. R. C.

General Land Office.

Washington, D. C., Oct. 29, 1889.

Address only the
Commissioner of the General Land Office.

J. Thomas Turner, Esq.,
Washington, D. C.

Sir:

I am in receipt of letter of Butt and Silver, dated the 29th of June, last, and its inclosures.

Among these inclosures is a paper signed by Butt and Silver, attorneys for Luis Lay, appointing you their attorney to prosecute and apply for patent in the case of the private land claim in Florida, of Teresa Rodrigues.

This claim has been surveyed in Tp. 19 S., Rs. 28 and 29 E., for 5426.82 acres.

Said claim was reported to Congress and was before that body when they passed the act of February 8, 1827, Stats. 4, p. 202. See American State Papers, Green's Edition, Vol. 4, pages 283, 300 and 471; also page 400.

This act of 1827, only confirmed those claims reported which were under the quantity of 3,500 acres and by its 12th section provided, as therein stated, for the survey of this and other claims, exceeding in area 3,500 acres.

Congress, by the act of May 23, 1828, Stats. 4, p. 284, provided by its 6th section, that those holding claims of this character, might secure a confirmation thereof by prosecuting the same in the courts.

970 Patents in this class of cases are based upon some confirmatory act of Congress, or upon a confirmation of some tribunal, created by Congress, for that purpose.

I do not find any act of Congress confirming this claim, nor do I find that the same has ever been presented to any tribunal created by Congress for its adjudication, and I must therefore decline to patent the same, for the want of proper evidence, upon which to base such action.

Respectfully,

LEWIS A. GROFF.
Commissioner.

ERB.

L.R.C.
J.V.W.
W.D.S.
J.C.

M.L. 195584.

Department of the Interior.

General Land Office.

Washington, D. C., April 3, 1890.

Address only the
Commissioner of the General Land Office.

Messrs. Butt and Silver.
Orlando, Fla.

Gentlemen:

It appears by your letter of the 6th ultimo that you are in receipt of the ruling of this office of the 29th of October last in the matter of the private land claim of Teresa Rodriguez to lands surveyed in Tp. 19 S., Rs. 28 and 29 E. Florida.

This ruling was addressed to J. Thomas Turner of this city as counsel in the case applying for the issuance of patent for the lands embraced by said survey.

The claim in question was presented for 5500 acres, and its survey contains 5426.82 acres.

971 The reason assigned in said ruling for not taking up said claim for patent, was that the same was an unconfirmed claim.

You now call the attention of this office to the 1st section of the act of May 23, 1828, stats. 4 p. 284, and claim a confirmation thereunder.

Your reason for holding that this claim was confirmed by said act is that its survey contains a less quantity than a league square.

This grant was made by Spanish authority and must be understood to mean a grant of 5500 acres, according to the measurement used by Spain in measuring grants of this character.

By reference to Peters Supreme Court Reports, Vol. 15 page 57, case of Mitchell et al v. The United States, you will find it stated that a Spanish league contains 5000 varas, and is equivalent to 4635 English yards.

A "league square" by this measurement contains 25,000,000 varas, or 4438.68 English acres.

The Rodriguez claim as before stated has been surveyed so as to embrace 5426.82 acres, or 988.14 acres in excess of a Spanish "league square."

Said act of 1828 provided a method by which claims not confirmed by its 1st section might be confirmed by its 2nd section. This 2nd section required the claimants, who accepted its provisions, to release the land in excess of a league square.

No release of the 988.14 acres herein referred to is found on file here.

The report upon the claim in question will be found printed in the American State Papers, Greens Edition, Vol. 4, pp. 283, 300, and 471, see also page 400 of this volume.

972 The Rodriguez claim not having been confirmed I must decline to take up the same with a view to the issuance of patent therefor.

Respectfully,

LEWIS A. GROFF,
Commissioner.

ERB.

"D" M.L. 19558[illegible].

Department of the Interior. L.R.C.

General Land Office. W.D.S.

Washington, D. C., May 9, 1891.

Address only the
Commissioner of the General Land Office.

Cecil G. Butt, Esq.,
Orlando, Fla.

Sir:

You having stated in your letter of the 1st instant that you had received a circular letter July 10, 1890, advising you that the papers filed by you with the Honorable Secretary of the Interior, for the purpose of being recognized as an attorney, were found to comply with the requirements of the department, I have now to inform you that as soon as the papers required can be transcribed your appeal, and the other papers constituting the record in the case, will be forwarded to the Honorable Secretary of the Interior.

The appeal referred to is that taken by you from the refusal of this office of April 3, 1890, to patent the private land claim of Teresa Rodriquez, in Tp. 19 S., Rg. 28 and 29 E., Florida.

Respectfully,

W. M. STONE,
Asst. Commissioner.

ERB.

973 Department of the Interior.

Office of U. S. Surveyor General.

Tallahassee, Florida, June 18th, 1894.

Hon. Commissioner
of the General Land Office.
Washington, D. C.

Sir:

In compliance with your instructions contained in letter "D" bearing date June 6th, 1894, I have the honor of trans-

mitting herewith plat and descriptive notes of the claim of Teresa Rodriquez. The inclosed plat and descriptive notes are prepared in accordance with the condensed history and record of the above claim as approved by Hon. LeRoy D. Ball, surveyor general, on 31st March, 1880. The above being a matter of record in the office I have adopted the description verbatim after examination and comparison as to accuracy and I hope same will meet your approval. Your letter "D" of March 3rd, 1894, mentions area of claim as 5426.82 acres, all the plats in this office, and calculation of its area would show that the tract in question contains 5486.46 acres as described by plat and notes inclosed. It would seem as though the portion of the claim described as Sec. 41 in Tp. 19 S., R. 29 East had been overlooked.

In connection with this I would state that the official plats of T. 19 S., S. 28 E. and of T. 19 S., R. 29 E., do not show the claim of Teresa Rodriquez. There is a plat (similar to inclosed plat) of the survey of this claim and its connections with the adjoining public surveys approved by B. A. Putnam, surveyor general, marked "Diagram to be appended to T. 19 S. R. 28 E." loosely appended to said township plat. I call the matter to your attention as I think it probable (from seeing copies of plats in State Land Office &c.) that there may be later approved plats of Ts. 19 S., Ranges 28 & 29 East, than those on file in this office and would respectfully ask if such are in your office that this office may be furnished with a copy thereof.

974

Very respectfully,

W. H. MILTON, JR.,
U. S. Surveyor General of Fla.

ERB.

Indorsed: 10/2.50 U. S. General Land Office, June 21, 1894. 66259 U. S. Surveyor General, Tallahassee, Fla., June 18, 1894. Transmits plat and descriptive notes of private land claim of Teresa Rodriquez. To Hon. Secty. & Shelly & Martin. Sept. 19/24. (Filed R. 6 Fla.)

Indorsed: Filed in evidence as Complainants' Exhibits Nos. 5, 6, 7 and 8, this Nov. 30, 1908. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

975 M.L. 201112
B. 4-207r.

Department of the Interior,

General Land Office.

Washington, D. C., June 13, 1908.

I hereby certify that the annexed copy of letter dated June 29, 1895, is a true and literal exemplification from the record of the letter in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

H. W. SANFORD,
Recorder of the General Land Office.

(Seal of General Land Office.)

976 Department of the Interior,

"D" General Land Office,

64702-1895 Washington, D. C., June 29, 1895.
W.H.W.

Messrs. Shalley and Martin,
Atty's at Law,
Washington, D. C.

Gentlemen:

Referring to your letter of the 20th inst., I have to state that the patent for the private land claim of Florida in the name of Teresa Rodriguez was duly issued on the 25th instant.

In consideration of the fact that you have prosecuted this claim before the Department, and in this bureau, as attorneys for the heirs of the said confirmee (deceased), I have concluded to deliver the patent to you, as requested, and the U. S. Surveyor General for Florida will be notified of the action taken.

Please acknowledge the receipt of the instrument which is herewith inclosed.

Respectfully,
S. W. LAMOREUX,
Commissioner.

Indorsed: Filed in evidence as Complainants' Ex. No. 9 this Nov. 30, 1908. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

977 State of Florida,
County of Orange.

This indenture, made this fifth day of July, A. D. 1852, between John Simpson, sheriff and ex-officio tax collector of Orange County and state aforesaid, of the one part, and John Starke of the other part, witnesseth, that whereas the said John Simpson being duly commissioned and qualified as sheriff and ex-officio tax collector of said County of Orange, did on the fifth day of July, 1852, levy upon and take in execution a certain tract of land hereinafter described, supposed to belong to Theresa Rodriguez, for taxes due thereon to said State of Florida, from the year eighteen hundred and forty-five and including eighteen hundred and fifty-one, and whereas the said John Simpson after due and legal publication of the same, did offer the said tract of land containing five thousand, four hundred and eighty acres and situated as follows, viz:

In section 37 township 19, range 28 did at public outcry for sale at the Courthouse of said County of Orange on the fifth day of July, A. D. 1852, and whereas the said party of the second part having offered then and there the highest bid for said tract of land, the same was knocked down to him by said party of the first, sheriff &c. as aforesaid. Now this indenture witnesseth that the said party of the first part, sheriff and ex-officio tax collector as aforesaid, for and in consideration of the sum of three hundred and forty-seven dollars and fifty cents say ($347 50/100) to him in hand paid by the said party of the second part at and before the sealing and delivering hereof the receipt whereof is hereby acknowledged, that granted, bargained and sold and by these presents doth grant, bargain and sell by virtue of his office aforesaid all the right, title and interest whatsoever of the said Theresa Rodriguez or others in

and to the tract of land above described with the appurtenances thereto belonging. To have and to hold the same unto the said party of the second part, his heirs and assigns to only proper use and behoof of said party of the second part, his heirs and assigns forever, and the said party of the
978 first part, sheriff and ex-officio tax collector as aforesaid, for himself, his heirs, executors and administrators, doth covenant and promise to and with the said party of the second part, his heirs and assigns, that he has well and truly complied with and performed all the requirements of the statute in such case made and provided, and the said party of the first part, sheriff &c. as aforesaid for himself, his heirs, executors and administrators doth warrant and forever defend unto the said party of the second part, his heirs and assigns the said tract of land with the appurtenances belonging thereunto against the said Theresa Rodriguez and others. In witness whereof I have hereunto set my hand and seal this day and in the year first above written.

JOHN SIMPSON,
(L. S.) Sheriff and Tax Collector
of Orange County.

Indorsed: Filed in evidence this Feb. 8, 1909, as Complainants' Exhibit No. 19. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

979 TRANSCRIPT OF FIELD NOTES

Of the Survey of the Private Claim of Theresa Rodriguez in Township No. 19 South, Ranges 28 and 29 East, Florida. Executed by M. A. Williams in 1851 at a Var of 4° E.

"T. 19, R. 28 S. & E.
Claim of Theresa Rodriguez on Big Spring.
Variation 4° E.

From Pine X R Ran South.
2.50 X N Line Sec 8 76.80 E of NW L.
Pine N 60 W 20
Pine S 10 W 15
82.60 X N Line Sec 17 76.50 E of NW L
Pine N 20 E 40 links

97.00 X branch C W
162.65 X N Line Sec 20 76.70 E of NW L
168.00 L
Pine N 60 E 60 X R

2d Line East (South Line)

3.80 X W Line Sec. 21 74.55 of SW L
Pine S 69 W 30
" S 31 E 20
51.00 To grass pond
57.00 do
83.80 X West line Section 22 in edge of branch of white sulphur spring. 74.60 N of SW L
85.00 X branch or creek
98.00 To hamk
163.65 X West line Sec. 23 74.65 North of SW L
Iron tree S 89 W 15
" " S 30 E 25
166.00 X branch C N
217.00 To swamp
241.00 X W line Section 24 74.70 North of SW L
Ash S 7 W 77
Maple S 30 E 20
270.00 To hamk
301.00 X hamk
304.00 To bay gall
306.50 X do
315.00 To hamk
323.40 X East line Sec. 24 74.80 N of SE L
Cabbage S 15 W 30
" S 28 E 12
327.00 L

980 East Line North

5.80 X North Line Sec 19. 76.45 W of NE L
Myrtle N 30 E 15
" S 26 E 20
13.00 To creek (deep)
14.00 X do
23.00 To scrub

30.00 To swamp
35.00 To hamk
55.00 X do
60.00 To pine & cabbage
65.00 X " "
78.00 To pine & cabbage
86.00 X N line Sec. 18. 67.30 W of Grant of Pedro Miranda
Pine N 62 E 50
" S 61 E 45
104.00 To hammock
125.00 X do
166.00 X N line Sec. 7 76.35 West of NE L
Cabbage S 30 E 50
" N 22 E 30
168.00 L
Pine N 50 W 26 X R

North Line West

3.50 X West line Sec 6 78 chs South of NW L
Pine N 25 E 60
" N 40 W 70
15.00 To swamp
23.00 X to hamk
40.00 Pine & cabbage
63.60 Burnt bay
83.65 X West line Sec 1 T 19 R 28 77.89 South of NW L
97.00 To hammock
125.00 To creek
125.60 X do
163.81 X West line Sec 2 77.65 South of NE L
Water oak N 28 W 41
Live " N 60 E 17
167.00 X hammock
243.70 X West line Sec 3 77.60 South of NW L last 80 chs scrubby
323.10 X West line Sec 4 77.85 South of NW L
Pine N 18 W 15 N 43 E 10
326.15 L

981 Office of U. S. Surveyor-General.

Tallahassee, Florida.

I, Charles H. Parlin, U. S. surveyor-general for the District of Florida, do hereby certify the foregoing and annexed pages numbered 1 and 2 to contain a true and correct copy of the field notes of survey of which they purport to be a transcript, as same appear of record in this office.

Witness my hand and private seal, (there being no official seal) this 28th day of January, 1908.

CHARLES H. PARLIN,
[Seal] U. S. Surveyor-General
Dist. of Florida.

Indorsed: Identified by J. O. Fries, Feb. 11, 1911. Identified by W. A. Beasly, Feb. 6, 1911. Filed in evidence by the complainants as Complainants' Exhibit No. ...., Feb. 11, 1911. C. B. Robinson, Spl. Master. Filed May 25, 1911. E. O. Locke, Clerk.

982 CERTIFIED COPY OF FIELD NOTES

of the Survey of Section Twenty-One, Township Nineteen South, Range Twenty-Eight East. Surveyed by R. W. Norris in 1848. Variation Not Given.

North on E. Bdy. From S.E. Cor. From Which.

On South Bdy. of Sec. 22 West at
80.13 Intersect meridian in edge of scrub and 23 lks., north of temporary post—make corner.
"Pine N. 75° E. 45 Pine S 41° E 80
Pine S. 48° W. 48 Pine N. 79° W. 115
West boundary of Section 22 North.
5.00 Enter scrub.
25.00 To pine woods.
39.93 Set 1/4 Sec. Post.
Pine S. 33° E. 40 Pine S. 7°1 E. 75
69.00 To Sulphur Spring.
79.86 To N.W. Cor. of section on edge of hammock.
Low slightly rolling & 3rd rate scrub & pine woods.
Timber small on this."

West on N. Bdy. From N.E. Cor. From Which.

South Boundary of Section 15 West, at

80.36 Intersect meridian 14 lks., south of temporary post & establish corner.

"Pine S. 8° E. 82 Cabbage N. 73° E.
Pine S. 65° W. 75 Pine N. 37° W. 65

South Boundary of Section 16. West.

39.98 Set 1/4 S. Post.

Pine S. 76° W. 35 Pine N. 40° E. 32

79.96 Intersect meridian 23 lks., north of temporary post —make corner.

Pine N 57° E. 35 Pine S. 22° E. 30
Pine S. 13° W. 45 Pine N. 38° W. 60

Low slightly rolling 3rd rate pine and some black jack. Timber thin and small.

983 South Boundary of Section 21. West.

11.00 To pond, extending 10 chs., North.

15.00 X do.

39.93 Set 1/4 S. Post.

Pine N. 23° E. 92. Pine S. 45° E. 10.

79.87 Intersect meridian 14 lks., north of temporary post —establish corner.

Pine N. 43° E. 40 Pine S. 42° E. 45
Pine N. 31° W. 26 Pine S. 22° W. 20

1st 10 chs., pine & saw palmetto. Remainder of pine wood. Timber thick but of ordinary size.

West Boundary of Section 21. North.

3.50 To lake.

40.11 Set 1/4 S. Post on point of land, running in from the west.

Pine N. 79° W. 40 Pine N. 69° E. 120

This last bearing is taken across a narrow neck of lake.

45.00 Re-enter lake.

61.00 To open pine woods.

80.23 To N.W. corner of section.

Lake & 3rd rate open pine woods. Low slightly rolling & timber thin and of ordinary size."

(The following survey of the south boundary line of claim of Theresa Rodriguez on Big Spring executed by M. A. Williams in 1851. Var. 4 East.)

"2nd Line East. (South line.)

3.80	X W. Line Sec. 21—74.55 N. of S.W. Cor. Pine S. 69° W. 30. Pine S. 31° E. 20.
51.00	To grass pond.
57.00	X do.
83.80	X West line Section 22 in edge of branch of White Sulphur Spring 74.60 N. of S.W. Cor."

984 I, B. E. McLin, commissioner of agriculture of the State of Florida, hereby certify, that as such officer, I am by virtue of Chapter 5611, Laws of Florida, the legal custodian of the records of the field notes of the United States surveys of the public lands of said State of Florida, formerly in the office of U. S. surveyor-general, and I further certify, that the foregoing on pages one and two are true and correct copies of the field notes of the United States survey of Section Twenty-one, Township Nineteen South, Range Twenty-eight East, as the same appears of record on file in this office, and in my custody, as aforesaid.

In testimony whereof, I have hereunto set my hand officially, and have caused to be affixed hereto the official seal of the Department of Agriculture of the State of Florida, at the Capitol, in the City of Tallahassee, on this the thirteenth day of February, A. D. 1911.

B. E. McLIN,
Commissioner of Agriculture
of the State of Florida.

[Seal of the Department of Agriculture.]

Indorsed: Refiled his Feb. 18, 1911. as Complainants' Exhibit No. B. C. B. Robinson, Special Master.

In Circuit Court of United States, Southern District of Florida.

In Chancery.

Marcos et al.

vs.

Wilson Cypress Company.

Offered in evidence by complainants, received and filed in evidence in accordance with agreement of counsel for respective parties, this 14th day of February, A. D. 1911.

GEORGE COUPER GIBBS,
[Seal] Notary Public State of Florida at Large.

985 In the United States Circuit Court, Southern District of Florida, in Chancery.

Enrique Pozo y Marcos et al.

vs.

Wilson Cypress Company.

The defendant objects to the admission in evidence of paper purporting to be certified copy of field notes of the survey of Section 21, Township 19 South, Range 28 East, surveyed by R. W. Norris in 1848, offered and filed on February 14th, A. D. 1911, by George Couper Gibbs, notary public of the State of Florida at large, under agreement of counsel that the same would be considered as filed with the Special Examiner and forwarded to him, together with the objections of the defendant to the introduction of said copy, upon the following grounds:

1. That said paper is immaterial, irrelevant and incompetent.

2. That there has been no proper foundation laid for the introduction of same in evidence.

3. That the contents of same have not been identified as the notes used by any witness in surveying, nor has said paper been so identified.

4. That there is no testimony of any witness, or anything else, in evidence concerning or relating to the particular paper offered.

E. E. HASKELL,
COOPER & COOPER,
Solicitors for Deft.

Indorsed: Objections. See inside for exhibit and file mark. Filed June 3, 1911. E. O. Locke, Clerk.

986 Internal Improvement Fund—State of Florida.

Deed No. 11018.

Know all men by these presents, that the undersigned, the trustees of the Internal Improvement Fund of the State of Florida, under an act of the General Assembly of said state, entitled "An act to provide for and encourage a liberal system of internal improvements in this state," approved January 6, 1855, for and in consideration of the sum of two dollars and fifty cents per acre, to them in hand paid by Albert S. Matlack of the County of Orange, State of Florida, have granted, bargained and sold, and do by these presents grant, bargain, sell and convey unto the said Albert S. Matlack and his heirs and assigns forever, the following described lands, to-wit: The east half of the northeast quarter of section twenty-three in township nineteen south, of range twenty-eight east, containing sixty-nine 47/100 acres, and lying and being in the County of Orange in said State of Florida: To have and to hold unto the said Albert S. Matlack and his heirs and assigns, forever.

In testimony whereof, the said trustees have hereunto subscribed their names and affixed their seals, and have caused the seal of "The Florida State Land Office" to be hereunto affixed, at the Capitol, in the City of Talla-

(Seal of the Florida State Land Office.)

hassee, on this, the thirtieth day of May, A. D. eighteen hundred and eighty-two.

(Seal) W. D. BLOXHAM, Governor.

(Seal) W. D. BARNES, Comptroller.

(Seal) HENRY C. L'ENGLE, Treasurer.

(Seal) GEO. P. RANEY, Attorney-General.

(Seal) P. W. WHITE, Commissioner of Lands and Immigration.

Indorsed: Filed for record in the office of the clerk of the Circuit Court of the County of Lake, State of Florida, on the 22d day of June, A. D. 1891, at 4 o'clock P. M. and recorded in Book 13 Deeds, on page 344145 this 23d day of June, A. D. 1891. H. H. Duncan, Clerk, by F. S. Russell, D. C. Filed in evidence as Exhibit No. C this March 20, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

987 The United States of America.

Certificate No. 2754.

To all to whom these presents shall come, Greeting:

Whereas A. S. Matlack, of Orange County, Florida, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Gainesville, Florida, whereby it appears that full payment has been made by the said A. S. Matlack according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto, for the west half of the northeast quarter of section twenty-one, in township nineteen south, of range twenty-eight east, of Tallahassee Meridian in Florida, containing sixty-nine acres and fifteen hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said A. S. Matlack.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of congress in such case made and provided, have given

and granted and by these presents do give and grant, unto the said A. S. Matlack and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said A. S. Matlack and to his heirs and assigns forever.

In testimony wherof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

(Seal of the General Land Office.)

Given under my hand, at the City of Washington, the twentieth day of June, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and seventh.

By the President: CHESTER A. ARTHUR.

By L. JUDD,

Asst. Secretary.

WM. H. WALKER,

Recorder of the General Land Office.

Recorded, Vol. 4, Page 191. Ad interim.

988 Indorsed: A. S. Matlack 2754. #3145. Filed for record in the office of the clerk of the Circuit Court of the County of Lake, State of Florida, on the 22d day of June, A. D. 1891, at 4 o'clock P. M., and recorded in Book 1, Plats, on page 427, this 23d of June, A. D. 1891. H. H. Duncan, Clerk, by F. L. Russell, D. C. (Seal of the Circuit Court.) Filed in evidence as Exhibit No. D, this March 20, 1911. C. B. Robinson, Special Master. Filed June 1, 1911. E. O. Locke, Clerk.

989 250397
B

S.E.H. Department of the Interior,

General Land Office.

Washington, D. C., March 28, 1911.

I hereby certify that the annexed copies of patents are true and literal exemplifications from the records in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

(Seal of U. S. General Land Office.)

H. W. SANFORD,
Recorder of the General Land Office.

990 Patent to A. S. Matlack, heretofore printed at page 859.

* * * * * * * *

991 424

The United States of America.

Certificate No. 2967.

To all to whom these presents shall come, Greeting:

Whereas, the heirs of Z. C. Drawdy, deceased, of Orange County, Florida, has deposited in the General Land Office of the United States a certificate of the register of the Land Office at Gainesville, Florida, whereby it appears that full payment has been made by the said heirs of Z. C. Drawdy, deceased, according to the provisions of the act of Congress of the 24th "of April, 1820, entitled "An act making further provision for the sale of the public lands," and the acts supplemental thereto for the west half of the northwest quarter of section twenty-two and the east half of the northeast quarter of section twenty-one in township nineteen south of range twenty-eight east of Tallahassee Meridian in Florida, containing one hundred and thirty-eight acres and forty-hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said heirs of Z. C. Drawdy, deceased. Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made

992 and provided, have given and granted, and by these presents do give and grant, unto the said heirs of Z. C. Drawdy, deceased, and to their heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said heirs of Z. C. Drawdy, deceased, and to their heirs and assigns forever.

In testimony whereof, I, Chester A. Arthur, President of

the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of August, in the year of our Lord one thousand eight hundred and eighty-three, and of the independence of the United States the one hundred and eighth.

By the President: CHESTER A. ARTHUR.
By C. L. JUDD,
Asst. Secretary.
L. W. CLARK,
(L. S.) Recorder of the General Land Office.

67

The United States of America.

Certificate No. 6247.

To all to whom these presents shall come, Greeting:

Whereas C. H. Cash, of Orange County, Florida, has deposited in the General Land Office of the United Sates, a certificate of the register of the Land Office at Gainesville, Florida, whereby it appears that full payment has been made by the said C. H. Cash according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands", and the acts supplemental thereto, for the north half of the northeast quarter (or the north half of the lots numbered one and
993 two) of section twenty, in township nineteen south of range twenty-eight east of Tallahassee Meridian, in Florida, containing seventy-eight acres and eight hundredths of an acre according to the official plat of the survey of the said lands, returned to the General Land Office by the surveyor general, which said tract has been purchased by the said C. H. Cash. Now know ye, that the United States of America in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said C. H. Cash and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said C. H. Cash and to his heirs and assigns forever.

In testimony whereof I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of March, in the year of our Lord one thousand eight hundred and eighy-five and of the independence of the United States the one hundred and ninth.

By the President: GROVER CLEVELAND.
By M. McKEAN, Secretary.
S. W. CLARK,
(L. S.) Recorder of the General Land Office.

Indorsed: Filed in evidence marked Complainants' Exhibit # ...., April 11, 1911. Special Master. (Raleigh C. Dowling, Notary Public.) Refiled in evidence as Exhibit No. E, this April 15, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

994 Chip # 1—3/29/11.
Is one of two blocks from tree standing within one foot of W. Grt. line & on E. side of line 5.63 chs. S. of point where Grt. line Xes N. line Sec. 20.
Tree 18 in. Diam.

Chip # 2— 6 ft. E. of line at 6.57 chs. from same point.
Tree 17 in. Diam.

Chip No. 3 from N.W. side of tree 15.88 East of old Grt. cor. standing 2 ft. S. of H. M. & O. Grt. line.
Diam. 17 inches.

Chip # 4 from N.E. side of tree at 303.64 chs. E. of S.W. Cor. of Grt.

Indorsed: Filed in evidence as Exhibit F this April 17, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

995 Know all men by these presents, that the Florida Land and Colonization Company, Limited, a corporation incorporated under the companies acts 1862 to 1898 of the Kingdom of Great Britain and Ireland, and whose offices are located at 2 Suffolk Lane, London A. C. England, and Sanford, State of Florida, United States of America, do by these presents make, constitute and appoint Frederic H. Rand (the manager of the said company in Florida) its true and lawful attorney to act for said company and on its behalf in Florida in the manner and for the purposes hereinafter mentioned, that is to say:

To ask, demand, sue for recover and receive of and from all persons and bodies politic or corporate companies, municipalities, authorities or powers liable to pay, transfer and deliver the same respectively all sums of money, stocks, funds, interest, dividends, debts, dues, goods, elects and things now owing or payable or belonging to said company as aforesaid or which shall at any time or times hereafter be owing or belonging to said company aforesaid by virtue of any security or upon any balance of accounts or otherwise howsoever and on payment, transfer or delivery thereof or of any part thereof respectively do give, sign and execute receipts, releases and other discharges for the same respectively.

Also to sell, convey and convert into money (but not to pledge or mortgage) and lands, hereditaments, plantations, forests, machinery, goods, chattels, effects or securities which now or at any time hereafter shall belong to said company as aforesaid or which may have any right or claim to sell for such price or sum of money and upon such terms and conditions as said attorney may think best for said company and in particular to allow any part of the purchase money to remain on mortgage of any property so sold as aforesaid for such period of time and at such rate of interest and generally on such terms as the said attorney shall think fit and advisable and if default be made in payment of the principal or interest the said attorney shall take all necessary steps for foreclosing such mortgage contract or agreement and realizing upon such security or other evidence of debt by sale or otherwise as to said attorney shall seem wise and expedient.

996 Also to enter into, make, sign, seal, execute, deliver, acknowledge and perform any contract, agreement, transfer, deed, writing or thing, with covenants to bind

said company as aforesaid that may in the opinion and judgment of the said attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged or performed for all and any of the purposes of these presents.

Also to let all or any part of the lands or tenements, hereditaments, premises and property belonging to said company as aforesaid or under its control either on lease or in any other manner and to distrain for rents due and all sums of money payable to said company by reason of any agreements, sale or sales, lease or leases.

Also to commence, prosecute or enforce or to defend, answer or oppose all actions and other legal proceedings or demands touching any of the matters aforesaid and also if the said attorney shall think fit or advisable to compromise, refer to arbitration, abandon, submit to judgment or become nonsuited in any such action or proceedings as aforesaid and to adjust, settle, compromise or submit to arbitration any accounts, debts, demands, claims and disputes touching any of the matters aforesaid.

Also to open a banking account in the company's name and to operate on such account as may be necessary for the purposes aforesaid and all other purposes in connection with the company's business.

Also to cultivate, farm or otherwise improve any of the company's properties either already or to be hereafter acquired, to make all agreements, contracts and to do and perform any and all things necessary for the cultivation and improving of said properties or any part thereof.

To insure and to cause to be insured against fire or the elements such property as shall be deemed expedient by said attorney and to cause such properties as is deemed expedient by said attorney to be kept in repair and in tenantable condition within a reasonable expenditure.

And generally to represent the company in Florida aforesaid and for all or any of the purposes aforesaid to use the corporate name and to execute any and all instruments of writing, acts, matters and things as fully and effec-
997 tually in all respects as said company corporate could do if present by its officers.

And all and whatsoever the said attorney shall do or cause to be done in or about the premises said company corporate for itself, its successors and assigns covenant with the said Frederic

H. Rand, his heirs, executors, administrators or legal representatives to allow, ratify and confirm.

In testimony whereof, the said The Florida Land and Colonization Company (Limited), a corporation as aforesaid, hath hereunto caused its corporate seal to be affixed, and these presents to be signed by its president and secretary, this sixth day of October, one thousand eight hundred and ninety-nine.

The Florida Land and Colonization ..... Limited, a corporation under the companies acts 1862 to 1898 of the Kingdom of Great Britain and Ireland.

By GEORGE S. MACKENZIE,
(Wafer) President.

Signed, sealed and delivered in our presence.
W. J. HURDLE,
Clerk to Mess. Renshaw Kenwich & Smith,
2 Suffolk Lane, London, Eng., Solicitors.
DOUGLAS J. NEWTON,
Notary Public, 31 Lombard St., London.

John Newton & Sons, Public Notaries,
31 Lombard St., London E. C.

Kingdom of Great Britain,
City and County of London, ss.

Be it known that on the sixth day of October, A. D. 1899, before me, Douglas John Newton, a notary public in and for said kingdom, city and county, duly appointed, admitted and sworn by royal authority and dwelling in the said city, personally came and appeared George Sutherland Mackenzie and James Stewart, to me personally known and known to me to be the same persons described in and who executed the within power of attorney, and the said George Sutherland Mackenzie as president of, and the said James Stewart as secretary of The Florida Land and Colonization Company Limited did personally acknowledge that they signed, sealed and delivered the annexed power of attorney as the act and deed of said corporation, and that the seal affixed thereto is the seal of
998 said corporation, and that said power of attorney was signed, sealed and delivered in behalf of said corporation and with the full and complete knowledge of the said corporation, and was the free act and deed of said corporation.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, the day and year above written.

In testimonium veritas.

(Notary's official seal) J. DOUGLAS NEWTON.

(1 shilling postage stamp 6/10/99)

(Coat of Arms E. Pluribus Unum)

Consulate-General of the United States of America for Great Britain and Ireland at London.

I, William M. Osborne, consul general of the United States of America at London, England, do hereby make known and cerify to all whom it may concern that Douglas J. Newton, who hath signed the annexed certificate, is a notary public, duly admitted and sworn and practicing in the City of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at London aforesaid this sixth day of October in the year of our Lord one thousand eight hundred and ninety-nine.

WM. M. OSBORNE,

(Official Seal of U. S. Con. G.) Consul-General.

Filed and recorded this April 23d, 1900, and I certify the foregoing is a true copy of the original power of atorney.

H. H. DUNCAN,

Clerk.

State of Florida,

County of Lake.

I, H. H. Duncan, clerk Circuit Court in and for the state and county aforesaid, hereby certify that the foregoing is a full and true copy of the record as appears at pages
999 538/541, Deed Book No. 35, records of said Lake Co., Fla.

Witness my hand and seal of office at Tavares, Lake Co., Fla., this August 6th, 1909.

H. H. DUNCAN,

(Seal of the Circuit Court) Clerk Circuit Court
Lake Co., Florida.
By E. A. PEET, D. C.

Indorsed: Fla. Land and Colonization Co. to Frederic H. Rand, power of atty. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 2 (in place of original heretofore offered). C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1000 Deed by Florida Land and Colonization Company to the Wilson Cypress Company, heretofore printed at page 32.

1002 Clerk's Certificate.

State of Florida,
County of Lake.

I, H. H. Duncan, clerk of the Circuit Court in and for the said county, do hereby certify that the foregoing deed, together with the certificate of authorization thereto attached, is duly recorded in my office in Deed Book 35, pages 593/5. Record verified.

Witness my hand and seal of office this 14th day of May, A. D. 1900.

(L. S.) H. H. DUNCAN,
(Seal of the Circuit Court) Clerk Circuit Court,
Lake County, State of Florida.

(Revenue stamps aggregating nine dollars.)

Indorsed: Deed. The Fla. Land & Colonization Company (Limited), a corporation, etc., to The Wilson Cypress Company, a corporation. Filed for record in office clerk Ct. Ct. Lake Co., Fla., this May 10, 1900. Recorded in Deed Record # 35, at page 593. Record verified, H. H. Duncan, Clerk. (Seal of the Circuit Court.) Filed in evidence as Defendant's Exhibit No. 3 this April 13, 1909. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1003 The State of Florida,
Orange County.

This indenture, made and entered into this the 23rd day of April, A. D. one thousand eight hundred and seventy-two,

1872, between Robert C. Partin, tax collector for Orange County, Florida, party of the first part, and William Mills of the aforesaid county and state, party of the second part.

Witnesseth: That whereas the said Robert C. Partin being duly commissioned and qualified as tax collector of said County of Orange, did on the twentieth day of August, A. D. one thousand eight hundred and seventy (1870) levy upon and take in execution a certain tract of land hereinafter described belonging to John Starke for taxes due thereon to said County of Orange and for the State of Florida for the years one thousand eight hundred and sixty-seven, one thousand eight hundred and sixty-eight and one thousand eight hundred and sixty-nine, and whereas the said Robert C. Partin after due and legal publication for six months before the day of sale did advertise the same in the St. Augustine Examiner, a newspaper published in St. Augustine, St. Johns County, Florida, said paper at that time being designated by law as a legal newspaper to publish such advertisement, and did on the sixth day of March, A. D. one thousand eight hundred and seventy-one, being the day of said sale, did during the legal hours of sale in front of the Courthouse in Orlando, Orange County, Florida, offer the following tract of land containing five thousand four hundred and twenty-six 22/100 acres more or less, situated as follows, viz: Sections twelve, thirteen, fourteen, fifteen, sixteen, ... nine, ten, & eleven and a part of sections one, two, three, four, five, eight, seventeen, twenty, twenty-one, twenty-two, twenty-three, and twenty-four in township nineteen south of range twenty-eight east, known as the grant of Theresa Rodriguez, said land lying and being in the County of Orange and State of Florida, did at public outcry offer the above described land for sale and where-
1004 as the said party of the second part having then and there offered the highest bid for said tract of land the same was knocked down to him by the said party of the first part, tax collector as aforesaid, for the sum of three hundred and forty-five 23/100 dollars, being the amount due on said land for taxes, and the same amount of money being in hand paid to the party of the first by the party of the second part, the receipt whereof is hereby acknowledged, now I, Robert C. Partin, tax collector of Orange County, Florida, party of the first part, hath bargained and sold and by these presents doth grant, bargain and sell by virtue of my office

aforesaid all the right and interest whatsoever of the said John Starke or others in and to the tract of land above described with the appurtenances thereunto belonging, to have and to hold the same unto the said party of the second part, his heirs and assigns to the only proper use and behoof of said party of the second part, his heirs and assigns forever, and the said party of the first part, tax collector as aforesaid, for himself, his heirs and assigns doth covenant and promise to and with the said party of the second part, his heirs and assigns, that the party of the first part has well and truly complied with and performed all the requirements of the statute in such cases made and provided. And the said party of the first part, tax collector of Orange County, Florida, for himself and by virtue of his office, will warrant and forever defend unto the party of the second part, his heirs and assigns, the aforesaid tract of land with the appurtenances thereunto belonging against the said John Starke or others.

In witness whereof I have hereunto set my hand and seal the day and year above written.

ROBERT C. PARTIN.

(Seal) Tax Collector of Orange County, Florida.

Signed, sealed and delivered in the presence of

JAMES J. DAVIS.

J. P. HUGHEY.

1005 State of Florida.

Orange County.

On this the 14th day of November, A. D. 1872, before me, J. P. Hughey, clerk of the Circuit Court in and for the state and county aforesaid, personally came Robert C. Partin, tax collector of Orange County, Florida, to me known to be the person who executed the within and foregoing deed of conveyance, and acknowledged the execution of the same as his act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my seal of office the day and year above written.

J. P. HUGHEY.

Clerk.

Indorsed: Deed from Robert C. Partin, tax col., to William Mills. Filed for record in the office of the Circuit Court of Orange County, Florida, on the 14th day of October, 1872.

and recorded on pages 310 & 311 of Book A of Miscellaneous Records of Orange County, Florida. J. P. Hughey, Clerk Circuit Court. (Seal.) Filed in evidence this Aug. 3/09 as Defendant's Exhibit No. 4. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1006 This indenture, made the 3rd third day of May in the year of our Lord one thousand eight hundred and seventy-two between William Mills and Mattie S. Mills his wife of the County of Orange and State of Florida of the first part, and George C. Powell of the second part: Witnesseth, that the said parties of the first part, for and in consideration of the sum of fifteen hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and heirs and assigns forever, all the following lots, tracts or parcels of land, situate, lying and being in the County of Orange and State of Florida and known and described as follows: Sections nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen, and a part of sections one (1), two (2), three (3), four (4), five (5), eight (8), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), in township nineteen, south, of range twenty-eight east, containing five thousand four hundred and twenty-six and 22/100 acres, more or less, and known as the Theresa Rodriguez grant. Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party

1007 of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever.

And the said William Mills and Mattie S. Mills for their heirs, executors and administrators, do covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said William Mills and Mattie S. Mills at the time of the sealing and delivery of these presents were lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple of and in all and singular, the above granted, bargained and described premises, with the appurtenances, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature and kind soever.

And the said William Mills and Mattie S. Mills for themselves and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person or persons whomsoever, lawfully claiming, or to claim the same, shall and will warrant and by these presents forever defend.

1008 In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

(Seal) WM. MILLS.

(Seal) MATTIE S. MILLS.

Signed, sealed and delivered in presence of us:

N. W. PRINCE.

I. B. JEFFROSET, J. P.

(U. S. revenue stamps.)

State of Florida,
Orange County.

Know all men by these presents that I, Mattie S. Mills, wife of the above named William Mills, do by these presents made and executed by me separate and apart from my said husband, and in the presence of I. B. Jefroset, a judicial officer of the State of Florida, acknowledge and declare that I did make myself a party to the foregoing deed of conveyance for the purpose of relinquishing my right of dower in and to the lands in said conveyance described and granted, and that said relinquishment and renunciation of dower was and is made freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from my said husband, the said William Mills. In witness whereof I have hereunto set my hand and seal this 3rd day of May, A. D. 1872.

(Seal) MATTIE S. MILLS.

Witness:
N. W. PRINCE.
I. B. JEFROSET, J. P.

State of Florida,
County of Orange.

On this day personally appeared before me Wm. Mills and Mattie S. Mills, to me well known as the person described in and who executed the foregoing deed of conveyance, and acknowledged that they executed the same for the purpose therein expressed; whereupon it is prayed that the same may be recorded.

1009 In witness whereof, I have hereunto affixed my hand and seal this the 3rd day of May, A. D. one thousand eight hundred and seventy-two.

(Seal) I. B. JEFROSET.
Justice of the Peace.

State of Florida,
Orange County.

To all whom it may concern:

Be it known that on this 3d day of May, A. D. 1872, personally appeared before me, a judicial officer of the State of Florida, the above named Mattie S. Mills, who being at the time separate and apart from her husband, William Mills, did then and there make and execute the foregoing acknowledgment,

her name being with her own hand subscribed and her seal affixed in my presence.

Witness my hand and seal at Apopka the day and year above written.

(Seal) I. B. JEFROSET,
Justice of the Peace.

Indorsed: Deed from Wm. Mills to Revd. Geo. C. Powell. Filed in the office of the clerk of the Circuit Court for the County of ....., State of Florida, the 14th day of October, A. D. 1872. Recorded in Book A, Miscellaneous Records, on pages 312, 313 & 314. J. P. Hughey, clerk of Circuit Court, Orange County. Filed in evidence this Aug. 3, 1909, as Defendant's Exhibit No. 5. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1010 This indenture, made this the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and eighty-one, between George C. Powell and his wife, both of the County of Orange and State of Florida, parties of the first part, and Henry S. Sanford of same county and state, party of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations ..... dollars, to them in hand paid by said parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, released, granted, conveyed and confirmed, and by these presents do bargain, sell, release, grant, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, all that certain piece and parcel of land situate in the County of Orange and State of Florida and described as follows to-wit: Section ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15) and sixteen (16) and parts of section one (1), two (2), three (3), four (4), five (5), eight (8), seventeen (17), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), all in township nineteen (19) south of range twenty-eight (28) east. Containing five thousand four hundred and twenty-six and twenty-two hundredths acres (5426.22) being known as the Theresa Rodriguez grant, less section (9) con-

taining (640) acres and which is not included in this deed. Together with all and singular the tenements, hereditaments, and appurtenaces thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part in and to the above described premises, and every part and parcel therof:

To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever.

1011 And the said parties of the first part, for their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that at the time of the delivery hereof the said parties of the first part are the lawful owners of the premises above granted, and seized thereof in fee simple absolute; that they are free from all incumbrances; that the said parties of the first part have good right to sell and convey the same to the said party of the second part as aforesaid; and that the said parties of the first part, their heirs, executors and administrators, the above described and hereby granted and conveyed premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their seals, the day and year first above written.

(Seal) G. C. POWELL.
(Seal) PATIENCE C. POWELL.

Signed, sealed and delivered in presence of
HENRY L. MEEKS.
JAMES B. WAITS.

Relinquishment of Dower.

State of Florida,
Sumter County.

Know all men by these presents, that I, Patience C. Powell, wife of George C. Powell, grantor in the foregoing deed conveying real estate, for and in consideration of the premises in said deed mentioned, and of one dollar to me in hand paid by H. S. Sanford, grantee in said deed mentioned, the receipt wherof is hereby acknowledged, have remised, re-
1012 leased, relinquished, renounced, and by these presents do remise, release, relinquish, renounce, and forever quit-claim, unto the said grantee, all my dower and right of dower in and to the lands in the foregoing deed mentioned and conveyed. To have and to hold the same unto the said grantee, heirs and assigns, forever; and I do hereby acknowledge that I do the same freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from my said husband.

In witness whereof, I have hereunto set my hand and seal, this the 27th day of October, A. D. 1881.

(Seal) PATIENCE C. POWELL.

Signed, sealed and delivered in presence of
HENRY L. MEEKS.
JAMES B. WAITS.

Separate Acknowledgment.

State of Florida,
Sumter County.

Be it remembered, that on this the 27th day of October, A. D. 1881, personally came before me, an acting justice of the peace, Patience C. Powell, wife of George C. Powell, who, upon examination by me, held separate and apart from her husband, acknowledged that she did make, sign and seal the foregoing renunciation, relinquishment and acknowledgment, freely, voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband.

Witness my hand and seal, this the 27th day of October, A. D. 1881.

[Seal] PATIENCE C. POWELL.

Acknowledgment taken and subscribed to before me, this the date last above written.

JAMES C. TERRY, (J. P.)
Justice of the Peace.

1013 Acknowledgment of Grantor.

State of Florida,
Sumter County.

On this day personally appeared before me George C. Powell and Patience C. Powell, his wife, to me well known, and acknowledged that they executed the foregoing deed for the purposes therein expressed; whereupon, it is prayed that the same may be recorded.

In witness whereof, I have hereunto set my hand and seal, this the 27th day of October, A. D. 1881.

[Seal] JAMES C. TERRY,
Justice of the Peace.

Clerk's Certificate.

State of Florida,
Orange County.

I, T. J. SHINE, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing deed, together with the relinquishment of dower and certificate of authentication thereunto attached, is duly recorded in my office in Deed Book Y, page 962.

Witness my hand and seal of office, this the 2nd day of Feb., A. D. 1884.

[Seal] T. J. SHINE, Clk.
By C. E. BACON, D. C.

[Seal of the Circuit Court]

Indorsed: Warranty Deed, George C. Powell and Wife to H. S. Sanford. Filed for Record by the Grantee this 2nd day of Feb., A. D. 1884. T. J. Shine, Clerk; by C. E. Bacon, D. C. Recorded in Book Y, page 962. (Seal of Circuit Court). Filed in evidence as Defendant's Exhibit No. 6, this Aug. 3, 1909. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

This indenture, made the 15th day of November
1014 in the year of our Lord one thousand eight hundred and eighty-one, between George W. Powell and Susan Powell, his wife, of the County of Orange and State of Florida, of the first part, and Henry S. Sanford of same county and state, of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of one dollar and other valuable considerations, dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and his heirs and assigns, forever, all that tract of land lying and being in the County of Orange and State of Florida, described as follows: All of Section Nine (9), Township Nineteen (19), S. of Range Twenty-eight (28), E. Excepting eighty (80) acres previously deeded to Ailliam Slade in the northwest corner of said section, being the north half of northwest quarter of the same, and excepting sixty (60) acres, more or less, lying between the mill road and the center line of the said section running north and south which was previously deed to Smith and Clifford, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, separate estate, property, possession, claim and demand, whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained and described premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit and behoof forever.

And the said parties of the first part for them-
1015 selves and for their heirs, executors and administrators, do covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part at the time of the seal-

ing and delivery of these presents, are lawfully seized in fee simple of a good, absolute and indefeasible estate of inheritance, of and in all and singular the above granted, bargained and described premises, with the appurtenances, and have good, right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same are now free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever. With the exception of one note of one thousand dollars ($1000), dated January first, eighteen hundred and eighty-one, bearing fifteen (15) per cent. interest from date, the said note being given to William E. Vail of New York, this deed being subject to said note.

And the said parties of the first part, for themselves and their heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and theirs heirs and against all and every person or persons, whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the said parties of the first
1016 part have hereunto set their hands and seals the day and year first above written.

(Seal) SUSAN POWELL.
(Seal) GEO. W. POWELL.

Signed, sealed and delivered in presence of us:
L. J. OWENS.
A. S. MATLACK.

State of Florida,
County of Orange.

Know all men by these presents, that I, Susan Powell, wife of the above named George W. Powell, do by these presents, made and executed by me separate and apart from my said husband, and in the presence of A. S. Matlack, a deputy clerk of the Circuit Court for said county of the State of Florida, acknowledge and declare that I did make myself a party to and executed the foregoing deed of conveyance for the purpose of relinquishing my right of dower in and to the lands in said conveyance therein described and granted, and that I did the same freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from my said husband.

In witness whereof, I hereunto subscribe my name and affix my seal, this 15th day of November, A. D. one thousand eight hundred and eighty-one.

(Seal) SUSAN POWELL.

L. J. OWENS, Witness.

State of Florida,
County of Orange.

To all whom it may concern, be it known that on this 15th day of November, A. D. 1881, personally appeared before me a deputy clerk of the Cict. Court of the State of Florida, the above named Susan Powell to me well known as the wife of George W. Powell, and as one of the persons described in and who executed the foregoing deed of conveyance, who being at the time separate and apart from her husband, the said George W. Powell, did then and there make and
1017 execute the foregoing acknowledgment, her name being with her own hand subscribed, and her seal affixed in my presence.

Witness my hand and seal at fifteenth, the day and year above written.

[Seal] J. P. HUGHEY,
County Clerk.
By A. S. MATLACK,
Deputy Clerk.

State of Florida,
County of Orange.

On this day personally appeared before me George W. Powell to me well known as the person described in, and who executed the foregoing deed of conveyance and acknowledged that he executed the same for the purpose therein expressed, whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto affixed my hand and seal, this 15th day of November, A. D. 1881.

[Seal] J. P. HUGHEY,
County Clerk.
By A. S. MATLACK,
Deputy Clerk.

State of Florida,
County of Orange.

Be it remembered that on this 2d day of February, A. D. 1884, I, T. J. Shine, clerk of the Circuit Court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof, I have hereunto set my hand and the seal of said Court, this day and year above written.

[Seal] T. J. SHINE, Clk.
(Seal of the Circuit Court.) By D. S. SHINE, D. C.

Indorsed: Warranty Deed. From Geo. Powell & Wife to H. S. Sanford. Filed in the office of the clerk of the Circuit Court of the County of ....., State of Florida, on the 2nd day of Feb., A. D. 1884, and recorded in Book 7 on page 276. T. J. Shine, clerk of Circuit Court; by D. S. Shine, D. S. [C.] (Seal of Circuit Court). Filed in evidence as Defendant's Exhibit No. 7, this Aug. 3, 1909. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1018 Tax Sale Deed No. 2.

To all Whom these Presents Shall Come—Greeting:

Whereas, at a sale of lands by Nat Poyntz, collector of revenue of the County of Orange at public auction at Orlando

in the said County of Orange on the sixth day of May in the year of our Lord one thousand eight hundred and seventy-eight, for the non-payment of the taxes levied and assessed thereon for the year one thousand eight hundred and seventy-seven, and which remained unpaid on the day of such sale, together with the costs and charges due therewith, the following described piece or parcel of land known and described as follows, to-wit: Rodriguez Grant less six hundred and forty acres containing three thousand eight hundred and twenty-six acres sold as the lands of George C. Powell, sold to Henry S. Sanford, who was the best bidder therefor, for the sum of thirty-seven dollars and fifteen cents, which such sum was the whole amount of taxes due and unpaid on said tract of land for the year aforesaid, together with the interest and costs due thereon, and the charges of such sale, and has been paid by the said Henry S. Sanford to the said Nat Poyntz, collector of revenue, aforesaid.

Now, therefore, know all men by these presents, that the State of Florida in consideration of the sum of money aforesaid and the premises and in conformity with law, hath and doth hereby give, grant and convey the said tract of land above described, together with the hereditaments and appurtenances, to the said Henry S. Sanford and to his heirs and assigns, to their sole use and benefit forever.

In testimony whereof, I. J. P. Hughey, clerk of the Circuit Court of Orange County, have executed this deed pursuant to and in virtue of the authority invested by law, and for and on behalf of said state, and have hereunto subscribed my name officially and affixed the seal of the Circuit Court of the said County of Orange at Orlando in the said County of Orange, this 25th day of January in the year of our Lord
1019 one thousand and eighty-two.

[Seal]

J. P. HUGHEY,
Clerk of the Circuit Court.
By T. J. SHINE
Dept. Clerk.

(Seal of the Circuit Court.)

Done in the presence of:
J. D. BEGGS.
THOS. E. WILSON.

State of Florida,
Orange County.

On this day personally came J. P. Hughey well known to me to be the clerk of the Circuit Court of Orange County, Florida, who executed the foregoing deed to H. S. Sanford and acknowledged that he executed the same for the purpose therein expressed.

Witness my hand and seal, this 25th day of January, A. D. 1882.

[Seal] THOS. EMMET WILSON,
Notary Public for the State of Florida.

The foregoing tax sale deed was filed for record in the office of the clerk of the Circuit Court for Orange County, Florida, on the 25th day of January, A. D. 1882, and duly recorded in said office in Book 1, Record of Tax Sale Deeds, on pages 126, 127 and 128.

J. P. HUGHEY,
Clerk, Ct. Ct., Orange Co., Fla.
By T. J. SHINE,
Dept. Clk.

Indorsed: Tax Sale Deed from J. P. Hughey, Clerk, to Hanry [Henry] S. Sanford. Filed for Record, January 25th, 1882. Recorded in Book "1," Record of Tax Sale Deeds, pages 126, 127, 128. J. P. Hughey, Clerk, Ct. Ct.; by T. J. Shine, D. C. Filed in evidence as Defendant's Exhibit No. 8, this Aug. 2, 1909. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1020 This indenture, made the 2nd day of December, A. D. 1899, between Edwyn Sandys and George Augustus Thomson, of London, England, trustees of the Florida Land and Colonization Company, Limited, incorporated under the Companies Act, 1862 to 1880, and whose registered office is situated at #13 Austin Friars, London E. C., England, parties of the first part, and the Florida Land and Colonization Company, Limited, of England, a corporation under and by virtue of the Companies Acts of 1862 to 1898, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one hundred dollars, lawful money, to them in hand paid by the party of the second part, at or before the ensealing and delivery of these

presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed and quit-claimed, and by these presents do grant, bargain, sell, remise, release, convey and quit-claim unto the said party of the second part and to its successors and assigns forever, all those certain pieces, tracts or parcels of land situated and lying in Lake Co., State of Florida, and being in the S. 1/2 of Sections 1, 2, 3, 4 and 5 and in the E. 1/2 of Sections 8 and 17 and in the N. 1/2 of Sections 20, 21, 22, 23 and 24, and all of Sections 9, 10, 11, 12, 13, 14, 15 and 16, known as the Theresa Rodreques or Powell Grant, all being in Township 19 South, of Range 28 East, except the N. 1/2 of the N. W. 1/4 of Sec. 9, and except sixty acres in Section 9 between the Mill Road and center line running north and south in said section, deed to Smith and Clifford, containing 5,366 acres of land, more or less.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the parties of the first part, of, in and to the above described premises and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

In witness whereof the said parties of the first
1021 part, by Frederic Henry Rand, their attorney in fact, have hereunto set their hands and seals, the day and year first above written.

EDWYN SANDERS DAWES AND GEORGE AUGUSTUS THOMSON,
Trustees of the Florida Land and Colonization Company, Limited, by Their Attorney in Fact. [Scroll Seal]

FREDERIC H. RAND. [Scroll Seal]
Atty. in Fact.

Signed, sealed and delivered in the presence of us:
H. A. McMULLEN,
F. P. FORSTER. [Corporate Seal]

State of Florida,
County of Orange.

Before me, Frank P. Forster, a notary public of said State, personally appeared Frederic Henry Rand, the attorney in fact of Edwyn Sanders Dawes and George Augustus Thomson, trustees as above described, to me well known to be the individual described in, and who as such attorney in fact executed the foregoing conveyance, and acknowledged that he signed, sealed and delivered the same as the act and deed of the said Edwyn Sanders Dawes and George Augustus Thomson, trustees as aforesaid for the purpose therein mentioned.

In witness whereof, I have hereunto set my hand and official seal at Sanford, Florida, this 12th day of December, A. D. 1899.

F. P. FORSTER. [L. S.]
[Notary's Official Seal] Notary Public.

I, H. H. Duncan, clerk of the Circuit Court in and for Lake County, State of Florida, do hereby certify that the foregoing is a true copy of the record recorded on pages 541 and 542, Book 35 of Deeds.

Witness my hand and seal of Court at Tavares, Lake Co., Florida, this 3d day of August, 1909.

H. H. DUNCAN,
[Seal of Circuit Court] Clerk.

Indorsed: Certified Copy Deed. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 9. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1022 Know all men by these presents that, whereas Edwyn Sandys Dawes, George Augustus Thomson and Antony Norris, all of London, England, trustees of the Florida Land and Colonization Company, Limited, incorporated under Companies Acts 1862 to 1880, and whose registered office is situated at No. 13 Austin Friars, in the City of London, England, did by deed dated the ninth day of October, one thousand eight hundred and eighty-four, constitute and appoint Edward Robert Trafford, of Sanford, Orange County, Florida, agent and general manager in Florida in the above named company, and William Beardall, of the same place, assistant manager of the said company, our attorneys for the

purposes in such deed mentioned; and, whereas, we are now desirous of canceling the appointment of the said Edward Robert Trafford and William Beardall as from the date hereof and as such trustees as aforesaid, do by these presents constitute and appoint Henry Shelton Sanford, of Sanford, Florida, in the United States of America, esquire, our true and lawful attorney to act for us from the date hereof (as from which date the said power of attorney dated the ninth October, one thousand eight hundred and eighty-four, shall be void) in the manner and for the purposes hereinafter mentioned; that is to say, to ask, demand, sue for, recover and receive of and from all persons and bodies politic or corporate, companies limited or unlimited, municipalities, authorities or powers liable to pay, transfer and deliver the same, respectively, all sums of money, stocks, funds, interests, dividends, debts, dues, goods, effects and things now owing or payable or belonging to us as such trustees as aforesaid of which shall at any time or times hereafter be owing or belonging to us as such trustees as aforesaid by virtue of any security or upon any balance of accounts or otherwise howsoever, and on payment, transfer or delivery thereof or of any part thereof, respectively, to give, sign and execute receipt releases and other discharges for the same respectively, and on non-delivery thereof or any part thereof respectively to commence, carry on and prosecute any action, suit or other proceedings whatsoever for recovering and compelling payment, transfer or delivery thereof respectively, and also to state, settle, adjust, compound, submit to arbitration and compromise all actions, accounts, reckonings, claims and demands whatsoever which now are or hereafter shall or may be depending between us as such trus-
1023 tees as aforesaid and any person or persons whomsoever or any bodies politic or corporate, companies limited or unlimited, municipalities, authorities or powers in such manner in all respects as the said attorney shall think fit, also to commence, prosecute and enforce or to defend, answer or oppose all actions and other legal proceedings in any court of law or equity or other courts whatsoever touching the same manners aforesaid or any other matters in which we as such trustees as aforesaid may be interested or concerned, and if the said attorney shall think fit to compromise, refer to arbitration, abandon, submit to judgment or become nonsuited in any such action or proceedings as aforesaid in

our names from time to time to purchase, take or lease, acquire by concession or otherwise any lands and hereditaments, plantations, forests, machinery, goods, chattels, effects or securities and procure the same to become vested in us as trustees for and on behalf of the company, also to sell and convert into money any lands, hereditaments, plantations, forests, machinery, goods, chattels, effects or securities which now or at any time hereafter shall belong to us as such trustees as aforesaid or which we may have any right or claim to sell for such price or sum of money upon such terms as he may think best for us. Also to enter into, make, sign, seal, execute, deliver, acknowledge and perform any contract, agreement, deed, writing or thing with covenants to bind us as trustees as aforesaid that may in the opinion of the said attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged or performed and for all or any of the purposes of these presents to use our names, and also in our names to lend money at interest on the security of real estate on first mortgage or on such other security as to the said attorney shall appear sufficient and satisfactory. Also to let all or any part of the lands, hereditaments, premises and property belonging to us as such trustees as aforesaid or under our control either on lease or in any other manner. Also to cultivate and manage all or any of the lands and property now vested or which may hereafter become vested in us as trustees for the company and to distrain for rents due and all sums of money payable to us by reason of any agreement, sale or sales, lease, or leases, and to sell or
1024 dispose of the crops, timber and produce thereof; also to open a banking account in our names and to operate on such account, also to appear before the Registrar General or Deputy Registrar of the said State or other the persons or person having jurisdiction in the manner to register this power of attorney, and also to appear before such registrar general, deputy registrar or other persons aforesaid whenever it shall be necessary to make such application and to sign and execute such indorsements, deeds and documents as may be necessary to effect the registration of this power of attorney or any attested copy thereof and of any mortgages, charges, transfers, conveyances and other documents in our favor as trustees of the company or to which we may be parties, and to do, execute and perform all other acts, deeds, manners and things

as may be necessary for effectuating the purposes aforesaid as fully and effectually to all intents and purposes as we could do if we were present, it being our intent and desire that all matters and things respecting the same shall be under the full management and control of the said attorney and also to appoint such bankers, solicitors or other agents in Florida aforesaid or elsewhere in the United States of America as he may be advised; also to substitute and appoint from time to time one or more attorneys or attorney under him, the said attorney, with the same or more limited power, and such substitute or substitutes at pleasure to remove and another or others to appoint; and all and whatsoever the said attorney shall do or cause to be done in or about the premises we hereby for ourselves, our executors or administrators covenant with the said Henry Shelton Sanford, his executors, administrators or assigns to allow, ratify and confirm.

In witness whereof, the said Edwyn Sandys Dawes, George Augustus Thomson and Anthony Norris have hereunto set their hands and seals this sixth day of April, one thousand eight hundred and eighty-seven.

[Seal] EDWYN S. DAWES.
[Seal] G. A. THOMSON.

Signed, sealed and delivered by the above named Edwyn Sandys Dawes and George Augustus Thomson in the presence of:

EDWIN ELLIS,
Solr. Clerk to Mess. Renshawns, 2 Suffolk Lane, London E. C.

ANTHONY NORRIS. [Seal]

1025 A. W. McFARLANE, 13 Austin Friars, London.

Signed, sealed and delivered by the above named Anthony Norris.

WM. THOS. MARSHALL,
I. TOWNSEND THOMSON,
Both of 2 Papeshead Alley, Cornhill, London E. C.

John Venn & Sons,
Public Notaries and Translators,
2 Pape's Head Alley, Cornhill.
Jentry W. E. Venn, Not. Pub.

I, William Euslace Venn, of the City of London, notary

public, by royal authority duly admitted and sworn undersigned, do hereby certify and attest unto all whom these presents may concern, that the power of attorney annexed under my official seal has been signed, sealed and delivered in due form of law in presence of me, notary, and the subscribing witnesses thereto by Edwyn Sandys Dawes, George Augustus Thomson and Anthony Norris, therein named and described unto me, notary, duly identified, and that the signatures "Edwyn S. Dawes," "G. A. Thomson" and "Anthony Norris," set and subscribed opposite to their seals at foot of such power of attorney, are the true signatures and of the proper handwritings of said parties, and that the signatures "Edwin Ellis" and "A. W. McFarlane," set and subscribed to the first attestation and "Wm. Thos. Marshall" and "I. Townsend Thomson," set and subscribed to the second attestation at foot of such power of attorney as witnesses to the due execution thereof by the said parties are the true signatures, and of the proper handwriting of Edwin Ellis, solicitors clerk to Messrs. Renshaws, 2 Suffolk Lane, London E. C., solicitors, and Archibald William Macfarlane of 13 Austin Friars, London E. C., and William Thomas Marshall and Joseph Townsend Thomson, both of 2 Pape's Head Alley, Cornhill, London E. C., gentlemen, and that full faith and credit may and ought to be given to the said signatures in the courts of judicature and thereout.

In testimony whereof, I have hereunto set my hand, and affixed my said official seal, seal to serve and avail
1026 where needful. London, this seventh day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

Veritas.
W. E. VENN,
Not. Pub.

[Notarial Seal]
[7/4/87 John Venn and Sons
Notarial Stamp one Shilling]

Consulate General of the United States of America for Great Britain and Ireland at London.

I, Thomas M. Waller, Consul General of the United States of America at London, England, do hereby make known and certify to all whom it may concern that William Eustace Venn

who hath signed the annexed certificate is a notary public duly admitted and sworn and practicing in the City of London aforesaid, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In witness whereof I have hereunto set my hand and affixed my official seal of office at London aforesaid, this 7th day of April, in the year of our Lord one thousand eight hundred and eighty-seven.

THOMAS WALLER,
[Consulate Genl. Seal] Consul General.

Filed for record 15th August, A. D. 1889, at 8 o'clock P. M. and recorded September 4th, A. D. 1889; and I certify that the foregoing pages 320 to 326 inclusive contain and are a full and true copy of the original power of attorney and certificates attached to the same.

H. H. DUNCAN, Clk.
By F. L. RUSSELL, D. C.

I, H. H. Duncan, clerk of the Circuit Court in and for Lake, do hereby certify that the foregoing is a true copy of the record recorded on pages 320 to 326 inclusive in Mis. Record # 1.

Witness my hand and official seal, at Travares, Fla., this Aug. 3, 1909.

[Seal of the Circuit Court] H. H. DUNCAN,
Clerk Ct. Ct., Lake Co., Florida.

Indorsed: Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 10. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1027 Know all men by these presents that, whereas, Edwyn Sandys Dawes, George Augustus Thomson and Anthony Norris, all of London, England, trustees of the Florida Land and Colonization Company, Limited, an English company, incorporated under the Companies Acts, 1862 to 1880, and whose registered office is at 13 Austin Friars in the City of London, did by deeds dated the sixth day of April, one thousand eight hundred and eighty-seven, constitute and

appoint Henry Shelton Sanford, of Sanford, Florida, in the United States of America, esquire, their true and lawful attorney, with power of substitution for them in their name, amongst other things to ask, demand, sue for, recover and receive of and from all persons and bodies public or corporate, companies limited or unlimited, municipalities, authorities or powers liable to pay, transfer and deliver the same respectively all sums of money, stocks, funds, interests, dividends, debts, dues, goods, effects and things then owing or payable or belonging to them as such trustees as aforesaid or which should at any time or times thereafter be owing or belonging to them as such trustees as aforesaid by virtue of any security or upon any balance of accounts or otherwise however, and on payment, transfer or delivery thereof or of any part thereof respectively to give, sign and execute receipts, releases and other discharges for the same respectively. Also to sell and convert into money any lands, hereditaments, plantations, forests, machinery, goods, chattels or effects which then or at any time thereafter should belong to them as such trustees as aforesaid or which they might have any right or claim to sell for such price or sum of money and upon such terms as he might think best for them; also to enter into, make, sign, seal, execute, deliver, acknowledge and perform any contract or agreement, deed, writing or thing with covenants to bind them as trustees as aforesaid that might in the opinion of the said attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged or performed with reference to the matters aforesaid, and for all or any of the purposes aforesaid to use their names; also to let all or any part of the lands, hereditaments, premises and property belonging to them as such trustees as aforesaid or under their control, either on lease or in any other manner, to distrain for rents, dues and all sums of money payable to them by reason of any agreements, sale or sales, lease or leases.

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Now, therefore, I, the said Henry Shelton Sanford, by virtue of the power and authority to me given in and by the said power of attorney, do make, constitute and appoint Frederic Henry Rand, of Sanford, Florida, aforesaid, manager of said company, as well for me, as the true and lawful attorney and substitute of the said constituents named in the said power of attorney to do, execute and perform the powers above ex-

pressed as fully as to all intents and purposes as the said constituents or I could do if personally present, hereby ratifying and confirming all that the said attorneys and substitute hereby appointed shall do in the premises by virtue hereof and the said power of attorney.

In witness whereof I have hereunto set my hand and seal this 18th day of April, one thousand eight hundred and eighty-seven.

[Seal] H. S. SANFORD.

Signed, sealed and delivered by the above named H. S. Sanford in presence of:

WILLIAM SLADE.
ADOLPH STEINEY.

Before me, William Slade, United States consul at Brussels, Belgium, Henry S. Sanford, known to me to be the person who executed the above power of attorney, and acknowledged that he did sign and seal the same to the intents and for the purposes therein set forth and expressed.

Witness my hand and the seal of the Consulate, this 16th day of April, A. D. 1887.

[Consulate Seal] WILLIAM SLADE,
United States Consul, Russels, Belgium.

Filed for record August 15th, 1889 and recorded
1029 September, 1880, and I certify that the foregoing is a true copy of the original P. of Atty.

H. H. DUNCAN, Clk.
By F. L. RUSSELL, D. C.

I, H. H. Duncan, clerk of the Circuit Court in and for Lake County, State of Florida, do hereby certify that the foregoing is a true copy of the record as recorded on pages 318 to 320 in Mis. record #2.

Witness my hand and seal of Court at Tavares, Florida, this 3d August, 1909.

H. H. DUNCAN, Clerk.

[Seal of the Circuit Court]

Indorsed: Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 11. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1030 This indenture, made this the fifteenth day of October, in the year of our Lord one thousand eight and eighty-three, between Lawrence P. Hughey and Mary Hughey, his wife, both of the County of Orange and State of Florida, parties of the first part, and H. S. Sanford, of the County of Orange and State of Florida, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of four hundred dollars to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, released, granted, conveyed and confirmed, and by these presents do bargain, sell, release, grant, convey and confirm unto the said party of the second part, his heirs and assigns forever, all that certain tract or parcel of land lying and being in the County of Orange and State of Florida, described as follows, to-wit:

All of the north half of the northwest quarter of Section nine (9) of Township nineteen (19) South, of Range twenty-eight (28) East, containing eighty (80) acres, more or less.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, in and to the above described premises, and every part and parcel thereof:

To have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to him and his own proper use, benefit and behoof forever. And the said parties of the first part, for their heirs, executors and administrators, do hereby covenant with the said party of the second part, his heirs and assigns, that at the time of the delivery hereof the said parties of the first part are the lawful owners of the premises above granted and seized in fee simple absolute; that they are free from all incumbrances; that the said parties of the first part have good right to sell and convey the same to the said party of the second part as aforesaid; that the

1031 said parties of the first part, their heirs, executors and administrators, the above described and hereby

granted and conveyed premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

[Seal] LAWRENCE P. HUGHEY.
[Seal] MARY V. HUGHEY.

Signed, sealed and delivered in presence of:
WILLIAM BEARDALL.
RICHARD H. MARKS.

Relinquishment of Dower.

State of Florida,
Orange County.

Know all men by these presents, that I, Mary V. Hughey, wife of Lawrence P. Hughey, grantor in the foregoing deed conveying real estate, for and in consideration of the premises in said deed mentioned, and of one dollar to me in hand paid by H. S. Sanford, grantee in said deed mentioned, the receipt whereof is hereby acknowledged, have remised, released, relinquishd, renounced, and by these presents do remise, release, relinquish, renounce and forever quit-claim unto the said H. S. Sanford all my dower, and right of dower, in and to the lands in the foregoing deed mentioned and conveyed. To have and to hold the same unto the said H. S. Sanford, his heirs and assigns forever, and I do hereby acknowledge that I do the same freely and voluntarily, and without any compulsion, apprehension or fear of or from my said husband.

In witness whereof, I have hereunto set my hand and seal, this the fifteenth day of October, A. D. 1883.

[Seal] MARY V. HUGHEY.

Signed, sealed and delivered in presence of:
WILLIAM BEARDALL.
RICHARD H. MARKS.

Separate Acknowledgment.

State of Florida,
Orange County.

Be it remembered, that on this 15th day of October, A. D. 1883, personally came before me, an acting notary
1032 public, Mary V. Hughey, wife of Lawrence P. Hughey, who, upon examination by me, held separate and apart from her husband, acknowledged that she did make, sign and seal the foregoing renunciation, relinquishment and acknowledgment freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and seal, this the fifteenth day of October, A. D. 1883.

[Seal] MARY V. HUGHEY.

Acknowledgment taken and subscribed to before me, this the date last above written.

RICHD H. MARKS,
[L. S.] Notary Public.

Acknowledgment of Grantor.

State of Florida,
Orange County.

On this day personally appeared before me, Lawrence P. Hughey and Mary V. Hughey, his wife, to me well known, and acknowledged that they executed the foregoing deed for the purposes therein expressed; wherefore, it is prayed that the same may be recorded.

In witness whereof, I have hereunto set my hand and seal, this the 15th day of October, A. D. 1883.

RICH'D H. MARKS, [L. S.]
[Seal] Notary Public.

Clerk's Certificate.

State of Florida,
Orange County.

I, T. J. Shine, clerk of the Circuit Court in and for said county, do hereby certify that the foregoing deed, together

with the relinquishment of dower and certificate of authentication thereunto attached, is duly recorded in my office in Deed Book Y, page 964.

Witness my hand and seal of office this the 2nd day of Feby., A. D. 1884.

T. J. SHINE,
Clerk of Circuit Court.
By C. E. BACON,
Deputy Clerk.

[Seal]

1033 State of Florida,
Orange County.

I, B. M. Robinson, clerk of the Circuit Court in and for said county and State, do hereby certify that the above and foregoing is a true and correct copy of the deed from L. P. Hughey and wife to H. S. Sanford as appears of record in my office in Deed Book Y on page 964 on February 2, 1884.

Witness my hand and seal of office, this August 6, A. D. 1909.

[Seal of the Circuit Court]

B. M. ROBINSON, Clerk.
M. I. HART, D. C.

Indorsed: Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 12. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1034 This indenture, made the ninth day of January, in the year of our Lord one thousand eight hundred and eighty-four, between Henry S. Sanford and Gertrude E. Sanford, his wife, of the County of Orange and State of Florida, parties of the first part, and Edwyn Sandys Dawes, George Augustus Thomson and Anthony Norris, trustees of the Florida Land and Colonization Company, Limited, of England, parties of the second part;

Witnesseth, that the said parties of the first part for and in consideration of the sum of one dollar and other good and valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed

and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part, and to their successors, heirs and assigns, forever, all those certain lots or pieces or parcels of land, lying and being in the County of Orange, and State of Florida, described as follows: Sections ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14) and part of fifteen (15) and sixteen (16) of section one (1), two (2), three (3), four (4), five (5), eight (8), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23) and twenty-four (24), all in township nineteen (19) south of range twenty-eight (28) east containing five thousand four hundred twenty-six and twenty-two one-hundredths (5426.22) acres. Also all of section nine (9) township nineteen (19) south of range twenty-eight (28) east. Excepting eighty acres being the north half of the northwest quarter of the said section and also excepting sixty acres more or less lying between the mill road and the center line of the said section running north and south which was once deeded to Smith and Clifford by Geo. W. Powell and wife, and the property known as the Theresa Rodriguez grant.

1035 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also all the estate, right, title, interest, dower and right of dower, separate estate, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained and described premises, with the appurtenances unto the said parties of the second part, their successors and assigns to their own proper use, benefit and behoof forever.

And the said parties of the first part, viz. Henry S. Sanford and Gertrude E. Sanford, his wife, for themselves, their heirs, executors and administrators, do covenant, promise and agree to and with the said parties of the second part, their successors and assigns, that the said parties of the first part at the time of the sealing and delivery of these presents are lawfully seized in the fee simple of a good, absolute and indefeasible estate of inheritance of and in all and singular the above

granted, bargained and described premises, with the appurtenances thereunto belonging, and have good right, full power and lawful authority to grant, bargain, sell and convey the same in the manner and form aforesaid. And that the said parties of the second part, their successors or assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part, their heirs and assigns, or any other person or persons lawfully claiming or to claim the same. And that the same are now free, clear, discharged and unincumbered of all and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

1036 And the said parties of the first part, for themselves and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with all the appurtenances, unto the said parties of the second part his successors and assigns, against the said parties of the first part and their heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] H. S. SANFORD.
[Seal] GERTRUDE E. SANFORD.

Signed, sealed and delivered in presence of us:
W. BEARDALL.
KING WYLLY.

State of Florida,
County of Orange, ss.

Know all men by these presents, that I, Gertrude E. Sanford, wife of the above named Henry S. Sanford, do by these presents, made and executed by me, separate and apart from my husband, and in the presence of E. R. Trafford, a notary public of the State of Florida, acknowledge and declare that I did make myself a party to and executed the foregoing deed of conveyance for the purpose of conveying and relinquishing

all my dower, right of dower and separate estate, or any other interest I may have in and to the lands in said conveyance herein described and granted, and that I did the same freely and voluntarily, and without any compulsion, contraint, apprehension or fear of or from my said husband.

In witness whereof, I hereunto subscribe my name and affix my seal, this ninth day of January, A. D. 1884.

[Seal] GERTRUDE E. SANFORD.

In presence of:

KING WYLLY.

1037 State of Florida,
County of Orange, ss.

To all whom it may concern: Be it known that on this day of January, A. D. 1884, personally appeared before me, a notary public of the State of Florida, the above named Gertrude E. Sanford, to me well known as the wife of Henry S. Sanford and as one of the persons described in, and who executed the foregoing deed of conveyance, who being at the time separate and apart from her husband, the said Henry S. Sanford, did then and there make and execute the foregoing acknowledgment, her name being with her hand subscribed, and her seal affixed in my presence.

Witness my hand and seal at Sanford the day and year above written.

[L. S.] E. R. TRAFFORD.
[Seal] Notary Public State of Florida.

State of Florida,
County of Orange, ss.

On this day personally appeared before me Henry S. Sanford, to me well known as the person described in, and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the purpose therein expressed; whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto affixed my hand and seal this ninth day of January, A. S. [D.] 1884.

[L. S.] E. R. TRAFFORD.

State of Florida,
County of Orange, ss.

Be it remembered, that on this tenth day of November, A.

D. 1884, I, T. J. Shine, clerk of the Circuit Court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof, I have hereunto set my hand and the seal of said Court the day and year above written.

[L. S.] T. J. SHINE,
Clerk Circuit Court.
D. S. SHINE, D. C.
Deputy Clerk.

1038 State of Florida,
County of Orange.

I, B. M. Robinson, clerk of the Circuit Court in and for said county and state aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the deed from H. S. Sanford and wife to Fla. Land & Colonization Co. as appears of record in my office in Deed Book 12, page 400, on November 10, 1884.

Witness my hand and seal of office this August 2, A. D. 1909.

B. M. ROBINSON,
[Seal of the Circuit Court] Clerk.
By M. I. HART, D. C.

Indorsed: Warranty deed from H. S. Sanford & wf to Fla. Ld. & Col. Co. Dated ..... Filed in the office of the clerk of the Circuit Court of the County of Orange, State of Florida, on the ..... day of ....., A. D. .... and recorded in Book .... on page ..... Record verified. ....., clerk of the Circuit Court, by ..... D. C. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 13. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1039 State of Florida,
Orange County.

This indenture, made this 8th day of May, in the year of our Lord one thousand eight hundred and seventy-three, between George C. Powell and Patience C. Powell, his wife, of the state and county aforesaid, of the first part, and Wm. P. Lassiter of the second part;

Witnesseth, that the said parties of the first part, for and

in consideration of the sum of five hundred dollars to them in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed and confirmed and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following lot, tract or parcel of land situate, lying and being in the County of Orange and State of Florida and known and described as follows: All the west half of section nine in township nineteen south of range twenty-eight east, lying north of the Mill Creek running through said section nine, bounded as follows: Commencing at the middle of the north line and running south until it strikes the mill road, then making that road the line until it strikes the hammock near the end of the mill dam then running easwardly following the hammock to the Sulpher Spring then following that spring run to the creek, including the land between this line and the creek, and from the mill dam following the water's edge up the mill pond to the head spring of said mill creek, reserving the right to raise the water as high as may be wanting and reserving all timber suitable for sawing purposes, said line to be run west from the head spring to the section line, containing three hundred acres, more or less. To have and to hold the above described premises with all and singular the rights and appurtenances thereunto belonging unto the party of the second
1040 part, his heirs and assigns, to their own use and benefit and behoof forever. And the said parties of the first part for themselves, their heirs and assigns, the above described premises will warrant and forever defend unto the party of the second part, his heirs and assigns forever in fee simple.

In witness whereof the parties of the first part have hereunto set their hands and seals day and date above written.

[Seal] G. C. POWELL.
[Seal] PATIENCE C. POWELL.

In the presence of:
E. K. FOSTER.
A. W. LEMARD.

State of Florida,
County of Orange.

Know all men by these presents, that I, Patience C. Powell,

wife of the above named George C. Powell, do by these presents made and executed by me separate and apart from my said husband and in the presence of John B. Bryson, a judicial officer of the State of Florida, acknowledge and declare that I did make myself a party to the foregoing deed of conveyance for the purpose of relinquishing my right of dower in and to the land in said conveyance described and granted and that said relinquishment and renunciation of dower was and is made freely and voluntarily and without any compulsion, restraint, apprehension or fear of or from my husband, G. C. Powell. In witness whereof, I have hereunto set my hand and seal, this the eighth day of May, A. D. 1873.

[Seal] PATIENCE C. POWELL.

In presence of:
E. K. FOSTER.
A. W. LEMARD.

State of Florida,
Orange County.

To all whom it may concern: Be it known that on this 8th day of May, A. D. 1873, personally appeared
1041 before me, a judicial officer of the State of Florida, the above named Patience C. Powell, who being at the time separate and apart from her husband, George C. Powell, did then and there make and execute the foregoing acknowledgment, her name being with her own hand subscribed and her seal affixed in my presence.

Witness my hand and seal, this 8th day of May, A. D. 1873.

JNO. C. BRYSON,
Justice of the Peace in and for the County of Orange.

State of Florida,
County of Orange.

Personally appeared before me George C. Powell and Patience C. Powell, to me well known as the persons described in and who executed the foregoing deed of conveyance and acknowledged that they executed the same for the purpose therein expressed. Whereupon, it is prayed that the same may be recorded.

In witness whereof I have hereunto affixed my hand and seal this the 8th day of May, A. D. 1873.

JNO. C. BRYSON,
Justice of the Peace for the County of Orange.

Filed for record in the office of the clerk of the Circuit Court of Orange County, State of Florida, on the 24th day of December, A. D. 1873, and recorded in said office.

J. P. HUGHEY,
Clerk Circuit Court for Orange County, Florida.

State of Florida,
County of Orange.

I, J. P. Hughey, clerk of the Circuit Court in and for the county and State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a deed
1042 of conveyance from George C. Powell and Patience C. Powell to Wm. P. Lassiter as appears of record in my office.

Witness my hand and seal at Orlando, this the 12th day of December, A. D. 1881.

J. P. HUGHEY,
Clerk.

By T. J. SHINE,
Dep't. Clerk.

[Seal of the Circuit Court]

Indorsed: Certified Copy of Deed from George C. Powell and Wife to Wm. P. Lassiter. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 14. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1043 State of Florida,
Orange County.

This indenture made the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-three, between George C. Powell and Patience C. Powell, his wife, of the County of Orange and State of Florida, of the first part, and George W. Powell of the second part, witnesseth that the said parties of the first part for and in consideration of the sum of five hundred dollars to them in hand paid at

or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed and confirmed and by these presens do grant, bargain, sell and convey and confirm unto the said party of the second part, his heirs and assigns forever all the following lot, tract or parcel of land situate, lying and being in the County of Orange and State of Florida and known and described as follows: All the east half of section nine lying north of the Mill Creek running through said section nine bounded as follows, commencing at the middle of the north line and running south until it strikes the mill road, then making that road the line until it strikes the hammock near the end of the mill dam, then running eastwardly following the hammock to the Sulphur Spring, then following that spring run to the creek, said section nine in Township nineteen South, of Range Twenty-eight East, containing three hundred acres, more or less, reserving timber. To have and to hold the above granted, bargained and described premises with all and singular the rights and appurtenances thereunto belonging unto the said party of the second part, his heirs and assigns to their own use, benefit and behoof forever. And the said G. C. Powell and Patience C. Powell for themselves and their heirs and assigns the above described premises will warrant and forever defend unto the party of the second part, his heirs and asigns forever in fee simple.

In witness whereof the parties of the first part have hereunto set their hands and seals day and date above
1044 written.

G. C. POWELL. [L. S.]
PATIENCE C. POWELL. [L. S.]

In the presence of:
E. K. FOSTER.
A. W. LEONARD.

State of Florida,
Orange County.

Know all men by these presents, that I, Patience C. Powell, wife of the above named George C. Powell, do by these presents, made and executed by me separate and apart from my said husband and in the presence of John C. Bryson, a judicial officer of the State of Florida, acknowledge and declare that I did make myself a party to the foregoing deed of con-

veyance for the purpose of relinquishing my right of dower in and to the lands in said conveyance described and granted and that said relinquishment and renunciation of dower was and is made freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from my said husband, the said G. C. Powell.

In witness whereof, I have hereunto affixed my hand and seal, this eighth day of May, A. D. 1873.

[Seal] PATIENCE C. POWELL.

Witness:

E. K. FOSTER.

A. W. LEONARD.

State of Florida,
County of Orange.

On this day personally appeared before me Patience C. Powell and George C. Powell, to me well known to be the persons described in and who executed the foregoing deed of conveyance and acknowledged that they executed the same for the purpose therein expressed. Whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto set my hand
1045 and seal, this 8th day of May, A. D. 1873.

JOHN C. BRYSON,

Justice of the Peace in and for Orange County, Florida.

State of Florida,
County of Orange.

To all whom it may concern, be it known that on this the 8th day of May, A. D. 1873, personally appeared before me, a judicial officer of the State of Florida, the above named Patience C. Powell, who being at the time separate and apart from her husband, George C. Powell, did then and there make and execute the foregoing acknowledgment, her name being with her own hand subscribed and her seal affixed in my presence.

Witness my hand and seal at Springfield the day and year above written.

JOHN C. BRYSON,

Justice of the Peace for Orange County.

The above and foregoing deed of conveyance, together with relinquishment of dower and certificate of authentication thereunto attached was filed for record in the office of the clerk of the Circuit Court of Orange County, Florida, on the 24th day of December, A. D. 1873, and was duly recorded in said office.

J. P. HUGHEY,
Clerk of Circuit Court for Orange County, Florida.

State of Florida,
County of Orange.

I, J. P. Hughey, clerk of the Circuit Court in and for the county and State aforesaid, do certify that the foregoing is a true copy of a deed of conveyance from George C. Powell and wife to Geo. W. Powell as appears of record in my office.

Witness my hand and seal at Orlando, this 12th day December, A. D. 1881.

J. P. HUGHEY,
Clerk.
By THOS. J. SHINE,
[Seal of Ct. Ct.] Dep't. Cl'k.

1046 Indorsed: Certified Copy of Deed from Geo. C. Powell and Wife to Geo. W. Powell. Filed in evidence, this August 9th, 1909, as Defendant's Exhibit No. 15. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1047 State of Florida,
Orange County.

Know all men by these presents, George C. Powell and Patience C. Powell, his wife, of the State of Florida and County of Orange, for and in consideration of the sum of one hundred dollars to us in hand paid, the receipt whereof is hereby acknowledged by George W. Powell, of the State and county aforesaid, have granted, bargained and sold and do by these presents grant, bargain, sell and convey to the said George W. Powell, his heirs and assigns forever the following described tract or parcel of land, lying and being in the State of Florida, Orange County, to-wit: That part of Section nine (9) in Township nineteen (19) South, of Range Twenty-eight (28) east, lying north of the mill creek, run-

ning through said Section nine, bounded as follows, commencing at north end of mill dam and following the road north to edge of pine land and hammock, then following the edge of hammock eastwardly to the Sulphur Spring, then following spring run to the creek, then following the creek up to mill dam, then following mill dam to the starting point at the north edge of said mill dam, containing four acres, more or less. To have and to hold unto him, the said George W. Powell, his heirs and assigns forever in fee simple. And the said George C. Powell, his heirs and assigns will forever warrant and defend the right and title thereof against the claim of all persons whatsoever.

In testimony whereof, we, George C. Powell and Patience C. Powell, have hereunto subscribed our names and affixed our seals this 27th day of February, A. D. 1877.

[Seal] GEORGE C. POWELL.
[Seal] PATIENCE C. POWELL.

IRA S. ROUSE.
W. P. LASSITER.

State of Florida,
Orange County.

Know all men by these presents, I, Patience C. Powell, wife of George C. Powell, do by these presents, made
1048 and executed by me separate and apart from my said husband and in the presence of Ira S. Rouse, a justice of the peace in and for the County of Orange and State of Florida, acknowledge and declare that I did make myself a party to the foregoing deed of conveyance for the purpose of relinquishing my right of dower in and to the land in said conveyance described and granted and that said relinquishment and renunciation of dower was and is made freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from my said husband, the said George C. Powell.

In witness whereof, I have hereunto set my hand and seal this, February 27th, A. D. 1877.

[Seal] PATIENCE C. POWELL.
[Seal] IRA S. ROUSE,
Justice of the Peace.

Witness:
IRA S. ROUSE.

State of Florida,
Orange County.

Personally came before me, the above named parties, well known to me as the parties who signed the foregoing deed and acknowledged that they did the same for the purposes therein contained. Wherefore, it is prayed that the same may be placed on record this 24th day of February, A. D. 1877.

[Seal] IRA S. ROUSE,
Justice of the Peace.

The above and foregoing deed of conveyance, together with the relinquishment of dower and certificate of authentication thereunto attached, was filed for record in the office of the clerk of the Circuit Court for Orange County, Florida, on the 4th day of March, A. D. 1878, and was duly recorded in said office in Book I. of Deeds, &c., on pages 211 and 212.

J. P. HUGHEY,
Clerk Circuit Court and Recorder for Orange County, Fla.
By C. A. BOONE,
Dept. Clk.

1049 State of Florida,
County of Duval.

I, J. P. Hughey, clerk of the Circuit Court in and for the county and State aforesaid, do certify that the foregoing is a true copy of a deed of conveyance from George C. Powell and wife to George W. Powell, as appears of record in my office.

Witness my hand and seal at Orlando, Fla., this 12th day of December, A. D. 1881.

J. P. HUGHEY,
Clerk.
By T. J. SHINE,
[Seal of the Circuit Court] Dep't. Clk.

Indorsed: Certified Copy of Deed from George C. Powell and Wife to Geo. W. Powell. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 16. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1050 This indenture, made the fourteenth day of August, in the year one thousand eight hundred and seventy-eight, between Geo. C. Powell and Patience C. Powell, his wife, of Orange County, State of Florida, of the first part, and Charles T. Smith and Guilford D. Clifford, of the same county and State, parties of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledgd, have remised, released and quit-claimed and by these presents do remise, release and quit-claim unto the said parties of the second part, and to their heirs and assigns forever all that certain tract, parcel, or piece of land, situate, lying and being in Orange County and State of Florida, known and described as follows, to-wit: Part of the grant known as the Theresa Rodriguez Grant, in Section nine (9) in Township nineteen (19) South, of Range Twenty-eight East (28), bounded as follows: Beginning at a cabbage palmetto on north side of mill branch one chain below breast of mill dam in S. W. 1/4 of said Section nine (9), Township Nineteen (19) South, of Range Twenty-eight (28) East, running thence N. 13° 45" E. 28-10/100 chains to a post; thence S. 88° east 12-35/100 chains to a post, witnesses by three notches in three pines; thence S. 2° W. 10-65/100 chains to a post in field; thence S. 88° E. 7-56/100 chains to a marked sweet bay in swamp; thence S. 2° W. (distance not measured) to the mill branch; thence up, or westward along north bank of said mill branch to place of beginning, containing sixty and one one-hundredths (60-1/100) acres. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof;

1051 and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in and to the above described premises and every part and parcel thereof with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said parties of the second part and their heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] GEORGE C. POWELL.
[Seal] PATIENCE C. POWELL.

Signed, sealed and delivered in presence of:
P. P. MORIN.
WM. H. LUCAS.

State of Florida,
Orange County.

Know all men by these presents that I, Patience C. Powell, wife of Geo. C. Powell, grantor in the foregoing deed, conveying real estate for and in consideration of the premises in said deed mentioned and of one dollar to me in hand paid by Chas. T. Smith and Guilford D. Clifford, grantees in said deed mentioned, the receipt whereof is hereby acknowledged, have remised, released, relinquished, renounced and by these presents do remise, release, relinquish and renounce and forever quit-claim unto the said Chas. T. Smith and Guilford D. Clifford all my dower and right of dower in and to the lands in the foregoing deed mentioned and conveyed. To have and to hold the same unto the said Chas. T. Smith and Guilford D. Clifford, their heirs and assigns forever, and I do hereby acknowledge that I do the same freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from my said husband.

In witness whereof I have hereunto set my hand
1052 and seal this the 14th day of August, A. D. 1878.

[Seal] PATIENCE C. POWELL.

Signed, sealed and delivered in presence of:
P. P. MORIN.
WM. H. LUCAS.
J. L. MOORE, Justice of the Peace.

State of Florida,
Orange County.

Be it remembered, that on this the 14th day of August, A. D. 1878, personally came before me, an acting justice of the peace, Patience C. Powell, wife of Geo. C. Powell, who

upon an examination by me held separate and apart from her husband, acknowledged that she did make, sign and seal the foregoing renunciation, relinquishment and acknowledgment freely, voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband and did with her own hand sign the said acknowledgment in my presence. Witness my hand and seal this the 14th day of August, A. D. 1878.

[Seal] PATIENCE C. POWELL.

Acknowledgment taken and subscribed before me this the date last above written.

JOHN L. MOORE.
Justice of the Peace.

State of Florida.
Orange County.

On this day personally appeared before me Geo. C. Powell and Patience C. Powell, his wife, to me well known, and acknowledged that they executed the foregoing deed of conveyance for the purposes therein expressd. In witness whereof I have hereunto affixed my hand and seal this the 14th day of August, A. D. 1878.

[Seal] JOHN L. MOORE.
Justice of the Peace.

1053 This acknowledgment and the foregoing relinquishment of dower and deed conveying real estate was filed for record in this office of the clerk of the Circuit Court for Orange County, Florida, April 4, 1880, and was recorded in Book T Deeds, pages 32, 33, 34, 35.

J. P. HUGHEY.
Clerk.
By C. A. BOONE.
Dep. Clerk.

State of Florida.
County of Orange.

I, J. P. Hughey, clerk of the Circuit Court in and for the county and state aforesaid, do hereby certify that the foregoing is a true and correct copy of deed from George C.

Powell and wife to Chas. T. Smith and Guilford D. Clifford on record in my office.

Witness my hand and seal this 13th day Dec., 1881.

J. P. HUGHEY,
Clerk.

[Seal of Circuit Court.]

By T. J. SHINE,
Dept. Clerk.

Indorsed: Certified copy of deed from George C. Powell and wife to Smith and Clifford. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 17. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1054 This indenture, made the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and eighty-eight, between George C. Powell and Patience C. Powell, his wife, parties of the first part, and William Slade, trustee for Lydia M. Slade, his wife, party of the second part;

Witnesseth, that the said parties of the first part, for and in consideration of the sum of sixteen hundred dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, bargained, granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said parties of the second part, and their heirs and assigns, forever all that lot or parcel of land in the County of Orange and State of Florida, said lands known and described as follows, to-wit: An equal and undivided one-half of that part of section nine south of the mill creek to where the east and west section line crosses said mill creek, including said mill creek, mill pond and mill, supposed to contain fifty acres more or less, all being in township nineteen, south of range twenty-eight east, together equal wrights to all timber suitable for sawing purposes in said section nine. Together with all and singular the improvements on the one-half, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and

reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, dower and right of dower, separate estate, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted and described premises, with the appurtenaces, unto the said party of the second part, her heirs and assigns, to her own proper use, benefit and behoof forever. And the said parties of the first part for themselves, their heirs, executors, and administrators, do hereby
1055 covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that the said parties of the first part have at the time of the sealing and delivery of these presents a good and lawfully seized in fee simple of a good, absolute, and indefeasible estate of inheritance, of and in all and singular the above granted, bargained, and described premises, with the appurtenances thereunto and have good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, her heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance on the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same are now free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of what nature and kind soever.

And the said parties of the first part, for themselves and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said parties of the first part, and their heirs and against all and every person or persons whomsoever, lawfully claiming, or to claim, the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said parties of the first part, have

hereunto set their hands and seal the day and year first above written.

[Seal] GEORGE C. POWELL.
[Seal] PATIENCE C. POWELL.

Signed, sealed and delivered in presence of us:
GEO. B. DICKENSON.
WM. MILLS.

1056 State of Florida,
County of Orange.

Know all men by these presents, that I, Patience C. Powell, wife of the above named George C. Powell, do by these presents, made and executed by me separate and apart from my said husband, and in the presence of Wm. Mills, County Judge of the State of Florida, acknowledge and declare that I did make myself a party to and execute the foregoing deed of conveyance for the purpose of relinquishing all my right and claim to dower in and to the lands in said conveyance described and granted, and that I did the same freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from my said husband, Geo. C. Powell.

In witness whereof, I hereunto subscribe my name and affix my seal, this twenty-fourth day of September, A. D. one thousand eight hundred and seventy-eight.

[Seal] PATIENCE C. POWELL.
GEO. B. DICKENSON.
WM. MILLS.

State of Florida,
County of Orange.

To all whom it may concern: Be it known that on this twenty-fourth day of September, A. D. 1878, personally appeared before me, a County Judge of the State of Florida, the above named Patience C. Powell, to me well known as the wife of George C. Powell and as one of the persons described in and who executed the foregoing deed of conveyance, who being at the time separate and apart from her husband, the said George C. Powell, that she did then and there make and and execute the foregoing acknowledgment, her name being

with her own hand subscribed, and her seal affixed in my presence.

Witness my hand and seal at Apopka, Fla., the day and year above written.

[Seal]

WM. MILLS,
County Judge.

1057 State of Florida,
County of Orange.

On this day personally appeared before me George C. Powell, to me well known as the person described in, and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the purpose therein expressed; whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto affixed my hand and seal this 24th day of September, A. D. 1878.

[Seal]

WM. MILLS,
County Judge.

The foregoing deed of conveyance with the relinquishment of dower and certificates of the acknowledgments of the same was filed for record in the office of the clerk of the Circuit Court of Orange County, Florida, on the 24th day of September, A. D. 1878, and was duly recorded in said office in the public records of Orange County.

J. P. HUGHEY.
Clerk of Circuit Court for Orange County, Florida.

State of Florida,
County of Orange.

I, J. P. Hughey, clerk of the Circuit Court in and for the county and state aforesaid, do certify that the above and foregoing is a true copy of the deed of conveyance from George C. Powell and wife to William Slade, trustee for Lydia M. Slade, as the same appears of record in my office.

Witness my hand and seal at Orlando, Fla., this 12th day of December, A. D. 1881.

[Seal of Circuit Court]

J. P. HUGHEY,
Clerk.
By T. J. SHINE,
Dep't Clk.

Indorsed: Certified copy of warranty deed from George C. Powell and wife to Wm. Slade, trustee for wife. Dated September 24, 1878. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 18. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1058 This indenture, made the 14th day of March, in the year of our Lord one thousand eight hundred and eighty-one, between George W. Powell and Susan Powell, his wife, of the County of Sumpter and State of Florida, parties of the first part, and William E. Vail, of the City of Auburn and State of New York, the party of the second part; whereas, the said George W. Powell is justly indebted to William E. Vail, the party of the second part, in the sum of one thousand dollars, lawful money of the United States of America, as evidenced by his certain promissory note of even date herewith, in words and figures as follows, to-wit:

$1000.00 Okeekumke, Fla., March 14th, 1881.

Three years after date, I promise to pay William E. Vail, or order, the sum of one thousand dollars, together with interest thereon from the 1st day of January, 1881, at the rate of fifteen per cent per annum, interest to be paid annually, for value received.

[Signed] GEORGE W. POWELL.

Now this indenture witnesseth, that the said parties of the first part, for the better securing the payment of the said sum of money mentioned in the foregoing promissory note and interest thereon as stipulated, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and his heirs and assigns forever, all that certain piece or parcel of land situate, lying and being in the County of Orange and State of Florida, and described as follows, to-wit: The undivided one-half of that part of section nine (9) township nineteen (19) south of range twenty-

eight (28) east lying on the south and west side of Mill Creek, including mill and mill seat and pond, containing fifty (50) acres more or less; also the entire one hundred and
1059 twenty (120) acres more or less, lying on the north side of said mill pond and bounded as follows, to-wit: Commencing at the center of the north line of section nine (9) running south until it strikes the mill road, then following the road to the end of the mill dam, then following the edge of the mill pond to the head springs of Mill Creek, then running due west to the grant line, then following the grant line north, then to the corner, then east to the starting point, except eighty (80) acres previously deeded to Wm. Slade in the northwest corner of said tract. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also, all the estate, right, title, interest, dower, and right of dower, separate estate, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted and described premises, unto the said party of the second part, his heirs and assigns to himself and to his own proper use, benefit and behoof forever. Provided always, and these presents are on this express condition, that if the said George W. Powell or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his heirs, executors ar administrators, or assigns, the said sum of money in said promissory note hereinbefore described and set forth, together with the interest thereon as stipulated and agreed in said note at the time and place of paying the same according to the true intent and meaning of this mortgage instrument, including all taxes and assessments upon said property, to be paid when the same shall be required by law, and every other charge thereon, together with all costs, charges and expenses which the said party of the second part may incur or be put to in collecting the same by foreclosure, or demand of attorney, or otherwise, that then these presents, and the estate hereby granted, shall cease, determine, and be absolutely null and void. And the said parties of the first part for themselves and their heirs, executors and

administrators do covenant and agree to pay unto
1060 the said party of the second part, his heirs, executors, administrators, or assigns, the said promissory note with interest and all cost, charges, and expenses which the said William E. Vail, party of the second part, may incur or be put to in collecting the same by foreclosure, including a reasonable attorney's fee, chargeable to the within described premises.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

[Seal] GEORGE W. POWELL.
[Seal] SUSAN POWELL.

Signed, sealed and delivered in presence of:
T. J. DAVIS.
WM. FOX.

State of Florida,
County of Sumpter.

Know all men by these presents, that I, Susan Powell, wife of the above named George W. Powell, do by these, made and executed by me separate and apart from my said husband and in the presence of Wm. Fox, a notary public of the State of Florida, acknowledge and declare that I did make myself a party to, and executed the foregoing mortgage deed for the purpose of relinquishing her dower and right of dower in and to the lands in said deed described and mortgaged and that I did the same freely and voluntarily, and without any compulsion, constraint, fear or apprehension of or from my said husband.

In witness whereof I hereunto subscribe my name and affix my seal this fourteenth day of March, A. D. one thousand eight hundred and eighty-one.

[Seal] SUSAN POWELL.

Witness:
WM. FOX.

State of Florida,
County of Sumpter.

To all whom it may concern: Be it known that on this fourteenth day of March, A. D. 1881, personally ap-
1061 peared before me, a notary public of the State of Florida, the above named Susan Powell, to me well

known as the wife of George W. Powell, and as one of the persons described in and who executed the foregoing mortgage deed, who, being at the time separate and apart from her husband, George W. Powell, did then and there make and execute the foregoing acknowledgment, her name being with her own hand subscribed, and her seal affixed in my presence.

Witness my hand and seal at Yalaha, Fla., the day and year above written.

[Seal] WM. FOX,
Notary Public State of Florida.

State of Florida,
County of Sumpter.

On this day personally appeared before me George W. Powell and Susan Powell, his wife, to me well known as the persons described in and who executed the foregoing mortgage deed, and acknowledged that they executed the same for the purpose therein expressed: whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto affixed my hand and seal this fourteenth day of March, 188..

[Seal] WM. FOX,
Notary Public State of Fla.

The above and foregoing mortgage deed was filed for record in the office of the clerk of the Circuit Court for Orange County, Florida, on the 16th day of March, A. D. 1881, and was duly recorded in said office in Book "B" of Mortgages on pages 335, 336, 337 and 338.

JAMES P. HUGHEY,
Clerk.
By J. L. BRYAN, D. C.

1062 State of Florida,
County of Orange.

I, J. P. Hughey, clerk of the Circuit Court in and for the county aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a mortgage deed on record in my office.

Witness my hand and seal of office at Orlando, Fla., this 10th day of December, A. D. 1881.

J. P. HUGHEY,
[Seal of the Circuit Court] Clk.
By T. J. SHINE, D. C.

Indorsed: Certified copy of mortgage from George W. Powell and wf. to Wm. E. Vail. Dated March 14, 1881. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 19. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1063 To all whom these presents shall come, Greeting:

Whereas, at a sale of lands by J. R. Montague, collector of revenue of the County of Orange, at public auction at Orlando, in the said County of Orange, on the 7th day of April, in the year of our Lord one thousand eight hundred and eighty-seven, for the non-payment of the taxes levied and assessed thereon for the year one thousand eight hundred and eighty-six, and which remained unpaid on the day of such sale, together with the costs and charges due therewith, the following described piece or parcel of land to-wit: NW 1/4, E 1/2 of SW 1/4, W 1/2 of SE 1/4 Sec. 21, Tp. 19 R. 28 E. 320 acres, sold to J. C. Krejce, who was the best bidder therefor, for the sum of eight dollars and 25 cents, which such sum was the whole amount of taxes due and unpaid on said tract of land for the year aforesaid, together with the interest and costs due thereon, and the charges of such sale, and has been paid by the said J. C. Krejce to the said J. R. Montague, collector of revenue aforesaid.

Now, therefore, know all men by these presents, that the State of Florida, in consideration of the sum of money aforesaid, and the premises, and in conformity with law, hath and doth hereby give, grant, and convey the said tract of land above described, together with the hereditaments and appurtenances, to the said J. C. Krejce and to his heirs and assigns, to their sole use and benefit forever.

In testimony whereof, I, T. J. Shine, clerk of the Circuit Court of Orange County, State of Florida, have executed this deed pursuant to and in virtue of the authority invested by law and for and on behalf of said state, and have hereunto

subscribed my name officially and affixed the seal of the Circuit Court of the said County of Oraige at Orlando in the said County of Orange, this 24th day of April, in the year of our Lord one thousand eight hundred and eighty-eight.

T. J. SHINE,
Clerk of the Circuit Court.

[Seal of Court.]

Done in the presence of:
M. P. CRUMPLER.
J. G. WELSBY.

1064 State of Florida,
Orange County.

On this day personally appeared before me, T. J. Shine, clerk Cir. Court, by R. T. Way, deputy clerk, to me well known as the person described in, and who executed the foregoing tax deed, and acknowledged that he executed the same for the purposes therein stated.

Witness my hand and seal at Orlando this 24th day of April, 1888.

[Seal]

A. N. HARRINGTON,
Notary Public.

I, H. H. Duncan, clerk of the Circuit Court in and for the County of Lake and State of Florida, do certify that the above and foregoing tax deed was filed April 30th, 1888, and duly recorded in the records of said county, on the 8th day of May, 1888, in Book 1 of Tax Deeds, page 60.

H. H. DUNCAN,
Clerk.
By R. H. WILLIAMS,
D. C.

State of Florida,
County of Lake.

I, H. H. Duncan, clk. Ct. Ct. Lake Co., Fla., do hereby certify that the foregoing is a full and true transcript of the record as appears at page 60, Tax Deed Book No. 1, records of said Lake Co., Fla.

Witness my hand and seal this August 5th, 1909.

H. H. DUNCAN,
Clerk Ct. Ct. Lake Co., Fla.
By E. A. PEET, D. C.

[Seal of the Circuit Court]

Indorsed: Tax deed from State of Florida to ..... Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 20. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1065 To all to whom these presents shall come, Greeting:

Whereas, at a sale of lands by A. J. Cassady, tax collector of the County of Lake, at public auction at Tavares, in the said County of Lake, on the second day of October, in the year of our Lord one thousand eight hundred and eighty-eight, for the non-payment of the taxes levied and assessed thereon for the year one thousand eight hundred and eighty-seven, and which remained unpaid on the day of such sale, together with the costs and charges due therewith, the following described pieces or parcels of land situate in Lake County Florida, to-wit:

No. Cert.		Sec.	Tp.	R.	Acres.	Amt. Sale.
583	E 1/2 of NW 1/4 of NE 1/4 &	11	17	28	20	1.76
584	N 1/2 of NE 1/4, N 1/2 of NW 1/4.....	17	17	28	160	5.70
94	NW 1/4 of SW 1/4, Lot 4, SW 1/4, Lot 3.....	30	17	28	159	21.91
708	E 1/2 of SW 1/4 & SW 1/4 of SW 1/4.....	4	19	28	120	3.08
235	W 1/2 of NE 1/4, SE 1/4 of NE 1/4, NW 1/4 of SE 1/4	25	19	28	160	4.59
798	NE 1/4 of SW 1/4, S 1/2 of SE 1/4	34	19	28	120	3.08

sold to S. W. Teague & Co., who was the best bidder therefor, for the sum of forty-one dollars and twelve cents, which such sum was the whole amount of taxes due and unpaid on said tracts of land for the year aforesaid, together with the interest and costs due thereon, and the charges of such sale, and has been paid by the said S. W. Teague & Co. to the said A. J. Cassady, tax collector aforesaid, which said tax sale certificates have been assigned to The Buffum Loan & Trust Co.

Now, therefore, know all men by these presents, that the

State of Florida, in consideration of the sum of money aforesaid, and the premises, and in conformity with law, hath and doth hereby give, grant, and convey the several tracts of land above described, together with the hereditaments and appurtenances, to the said The Buffum Loan & Trust Company and to its heirs and assigns, to their sole use and benefit
1066 forever.

In testimony whereof, I, H. H. Duncan, clerk of the Circuit Court of Lake County, have executed this deed pursuant to and in virtue of the authority invested by law and for and on behalf of said state, and have hereunto subscribed my name officially, and affixed the seal of the Circuit Court of the said County of Lake, at Tavares, in the said County of Lake, this 4th day of August, in the year of our Lord one thousand eight hundred and ninety-one.

H. H. DUNCAN,
[Ct. Ct. Seal] Clerk of the Circuit Court.
Done in the presence of:
F. L. RUSSELL.
W. P. ETHERIDGE.

State of Florida,
Lake County.

On this day personally appeared before me, H. H. Duncan, clerk Ct. C., to me well known as the person described in, and who executed the foregoing tax deed, and acknowledged that he executed the same for the purposes therein stated.

Witness my hand and seal at Tavares, this 4th day of August, 1891.

[Seal] J. T. WHITE.
[Co. Court Seal] County Judge.

I, H. H. Duncan, clerk of the Circuit Court in and for the County of Lake and State of Florida, do certify the above and foregoing tax deed was filed and duly recorded in the records of said county, on the 12th day of August, 1891.

H. H. DUNCAN,
Clerk.

1067 State of Florida,
County of Lake.

I, H. H. Duncan, clerk Ct. Ct. Lake Co., Fla., do hereby

certify that the foregoing is a full and true transcript of the record as appears at page 380, Tax Deed Book No. 1, records of said Lake Co., Fla.

Witness my hand and seal of office, this August 5th, 1909.

H. H. DUNCAN,

[Seal of the Circuit Court] Clerk Ct. Ct. Lake Co., Fla.

By E. A. PEET, D. C.

Indorsed: Tax deed from State of Florida. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 21. C. B. Robinson, Special Master. Filed. E. O. Locke, Clerk.

1068 This indenture, made the 9th day of August, in the year of our Lord one thousand eight hundred and eighty, between George C. Powell and Patience C. Powell, of the County of Orange and State of Florida, of the first part, and George W. Powell, of Sumter County, Florida, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part and his heirs and assigns, forever, all that tract of land lying and being in the County of Orange and State of Florida, described as follows: The undivided one-half (1/2) of that part of section nine (9) township nineteen (19) south of range twenty-eight (28) east lying on the south and west side of Mill Creek, including mill and mill seat and pond, containing fifty (50) acres more or less; also one hundred and twenty (120) acres more or less lying on the north side of said mill pond and bounded as follows: Commencing at the center of the north line of said section running south until it strikes the mill road, then following the road to the end of the mill dam, then following the edge of the mill pond to the head springs of the mill creek, then running due west to the grant line, then following the grant line north to the corner, then east to the starting point. Excepting eighty (80) acres previously deeded to Wm. Slade

in the northwest corner of said tract. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and
1069 the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate right, title, interest, dower, and right of dower, separate estate, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his own proper use, benefit and behoof forever.

And the said parties of the first part for themselves and for their heirs, executors, and administrators, do covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part at the time of the ensealing and delivery of these presents are lawfully seized in fee simple of a good, absolute, and indefeasible estate of inheritance, of, and in, all and singular, the above granted, bargained, and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same. And that the same are now free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances of what nature and kind soever. And the said parties of the first part, for themselves and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof,
1070 with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person or persons whomsoever, lawfully claiming, or to

claim, the same, shall and will warrant, and by these presents forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Seal] G. C. POWELL.
[Seal] PATIENCE C. POWELL.

Signed, sealed, and delivered in presence of us:
GEO. H. BROWNE.
ANDREW AULIN.

State of Florida,
County of Orange.

Know all men by these presents, that I, Patience C. Powell, wife of the above named George C. Powell, do by these presents, made and executed by me separate and apart from my said husband, and in the presence of Andrew Aulin, a justice of the peace of the State of Florida, acknowledge and declare that I did make myself a party to, and executed, the foregoing deed of conveyance, for the purpose of relinquishing my right of dower in and to the lands in said conveyance described and granted, and that I did the same freely and voluntarily, and without any compulsion, constraint, apprehension or fear of or from my said husband.

In witness whereof, I hereunto subscribe my name and affix my seal this 9th day of August, A. D. one thousand eight hundred and eighty.

[Seal] PATIENCE C. POWELL.
GEO. H. BROWNE.
ANDREW AULIN, J. P.

State of Florida,
County of Orange.

To All Whom It May Concern: Be it known that on this 9th day of August, A. D. 1880, personally appeared before me, a justice of the peace of the State of Florida, the above named Patience C. Powell, to me well known as the wife of George C. Powell, and as one of the persons described in and who executed the foregoing deed of conveyance, who being at the time separate and apart from her husband, the said George C. Powell, did then and there make and execute the foregoing acknowledgment, her

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name being with her own hand subscribed, and her seal affixed in my presence.

Witness my hand and seal, at Oviedo, Florida, the day and year above written.

[Seal] ANDREW AULIN,
Justice of the Peace.

State of Florida,
County of Orange.

On this day personally appeared before me George C. Powell, to me well known as the person described in, and who executed the foregoing deed of conveyance, and acknowledged that he executed the same for the purpose therein expressed; whereupon it is prayed that the same may be recorded.

In witness whereof, I have hereunto affixed by hand and seal this 9th day of August, 1880.

[Seal] ANDREW AULIN,
Justice of the Peace.

State of Florida,
County of Orange.

Be it remembered, that on this seventh day of February, A. D. 1881, I, J. P. Hughey, clerk of the Circuit Court in and for said county, have duly recorded the foregoing deed in the public records of said county.

In witness whereof, I have hereunto set my hand and the seal of said court, this day and year above written.

[Seal] J. P. HUGHEY,
[Seal of Circuit Court.] Clerk.

Indorsed: Warranty deed. From George C. Powell and wife to George W. Powell. Dated August 9th, 1880. Filed in the office of the clerk of the Circuit Court of the County of ....., State of Florida. On the 7th day of February, A. D. 1881, and recorded in Book "R" on page 468. J. P. Hughey, Clerk of Circuit Court. (Seal.) Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 22. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1072 State of Florida,
County of Orange.

Know all men by these presents, that Patience C. Powell and Geo. C. Powell, her husband, of the State of Florida and County of Orange, for and in consideration of the sum of one thousand ($1,000) dollars, to them in hand paid at and before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and do by these presents grant, bargain, sell and convey unto Geo. W. Powell, his heirs and assigns forever; (and) the following described tract or parcel of land lying and being in the State of Florida, Orange County, to-wit: Commencing at mill road (14) chains south of half mile stake on north line of section nine (9) township nineteen (19) south of range twenty-eight (28) east, from northwest corner of said section thence six chains and corner, then east eight chains and (27) twenty-seven links, thence south twenty-five chains and corner, thence west twenty chains and seventy-seven links and corner on mill road, thence following mill road to beginning corner, containing (40) forty acres more or less, to have and to hold unto him, the said Geo. W. Powell, his heirs and assigns, the said Patience C. Powell and Geo. C. Powell, her husband, will forever warrant and defend the right and title hereof against the claims of all persons whatsoever, in fee simple.

In testimony whereof the said Patience C. Powell and Geo. C. Powell, her husband, have hereunto subscribed their names and affixed our seals this the twenty-fifth day of June, A. D. 1881.

[Seal] PATIENCE C. POWELL.
[Seal] GEORGE C. POWELL.

Signed, sealed and delivered in presence of witnesses:
J. R. A. TUCKER.
W. B. SINGLETON.

State of Florida,
County of Orange, ss.

On this day personally appeared before me, a notary public
in and for said County of Orange and State of Flor-
1073 ida, Patience C. Powell and George C. Powell, her
husband, to me well known as the persons described in and who executed the foregoing deed of conveyance and

acknowledged that they executed the same for the purposes therein set forth and expressed, whereupon it is prayed that the same may be recorded.

In witness whereof I have hereunto set my hand and affixed my seal this twenty-fifth day of June, A. D. 1881.

F. G. BALDWIN,

[Notarial Seal] Notary Public for Orange Co., Fla.

State of Florida,
Orange County.

Be it remembered that on this twenty-fifth (25th) day of June, A. D. 1881, before me, an acting notary public in and for the state and county aforesaid, personally appeared Patience C. Powell, to me well known as the wife of George C. Powell, and as one of the persons described in and who executed the foregoing deed of conveyance, who upon an examination by me separate and apart from her husband acknowledged that she executed the said deed freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from her said husband. In witness whereof I have hereunto set my hand and seal the day and year above written.

June 25th, 1881.

F. G. BALDWIN,

[Notarial Seal] Notary Public.

Indorsed: Deed, Patience C. Powell and George C. Powell to Geo. W. Powell. Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 23. C. B. Robinson, Special Master. Filed June 3/ 1911. E. O. Locke, Clerk.

1074 This indenture, made the seventh day of November, A. D. 1881, between J. L. Bryan, of the County of Orange and State of Florida, a commissioner appointed by the Hon. Robert L. Summerlin, Judge of the County Court for Orange County, Florida, under an act of the General Assembly of the State of Florida approved February 16th, A. D. 1870, entitled an act in reference to the real and personal estates of decedents, regulating the sale thereof and prescribing the practice in such cases, of the first part, and George W. Powell, of the County of Orange and State of Florida, party of the second part, witnesses, that whereas upon the petition of Wm.

Slade, administrator of the estate of L. M. Slade, late of said county and state, deceased, the Judge of the County Court aforesaid on the 7th day of July, A. D. 1881, granted an order for the sale of real estate belonging to the estate of the said L. M. Slade, deceased, being the lands hereinafter described and intended to be conveyed, and by the said order J. L. Bryan was appointed a commissioner to advertise and sell said lands according to the requirements of said act, and whereas the commissioner so appointed and authorized, after giving due and legal notice by four weeks' publication in the Orange County Reporter, a weekly newspaper published at Orlando, in said County of Orange, giving the time, place and terms of sale, did at the Courthouse door in said Town of Orlando, during the legal sale hours on Monday, the seventh day of November, A. D. 1881, offer for sale at public outcry to the highest and best bidder the lands and premises hereinafter described and intended to be conveyed, and the said G. W. Powell having then and there offered the sum of eight hundred dollars for said lands, which being the best bid offered at said sale, was declared the purchaser thereof, at and for the said sum of eight hundred dollars. And whereas the
1075 said G. W. Powell has paid into the hands of the said J. L. Bryan, commissioner aforesaid, the sum total of said purchase money, to-wit, eight hundred dollars in cash, in accordance with the terms of said sale, and the said sale having been duly confirmed by the Hon. Robt. L. Summerlin, Judge of the County Court aforesaid, and the said J. L. Bryan as such commissioner having been ordered and directed by the said court to execute and deliver to said purchaser a deed of conveyance to said lands.

Now this indenture witnesseth, that the said J. L. Bryan, commissioner as aforesaid, for and in consideration of the premises and in consideration of the said sum of eight hundred dollars to him in hand paid by the said George W. Powell, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey by virtue and under the order aforesaid, unto the said George W. Powell and his heirs and assigns forever the said lands herein mentioned and described as follows, to-wit: An equal and undivided one-half interest of that part of section nine (9) township nineteen (19) south of range twenty-eight

(28) east, which lies south of Mill Creek to where the east and west section line section line crosses said Mill Creek, including said Mill Creek, mill pond, and mill, together with an equal right to all timber suitable for sawing purposes, containing fifty acres more or less, and lying and being in the County of Orange in the State of Florida.

To have and to hold unto the said George W. Powell, his heirs and assigns forever. And the said J. L. Bryan, commissioner as aforesaid, does hereby covenant, promise and agree to and with the said George W. Powell, his heirs and assigns, that he has as such commissioner well and faithfully complied with and performed all the requirements of the order of
1076 Court and the requirements of the statute hereinbefore referred to, and that he will by virtue of his office as such commissioner warrant and defend the title to said lands unto the said party of the second part and to his heirs and assigns forever.

In testimony whereof the said commissioner, acting under and by virtue of the aforesaid order, has hereunto set his hand and affixed his seal this the day and year first above written.

J. L. BRYAN,
Commissioner.

Signed and sealed in presence of us:
JAMES M. BLITCH.
J. P. HUGHEY.

State of Florida,
County of Orange.

On this day personally appeared before me, J. L. Bryan, commissioner, and acknowledged that he executed the foregoing deed of conveyance for the purpose therein expressed.

Witness my hand and seal of office at Orlando, this 8th day of November, A. D. 1881.

J. P. HUGHEY,
[Seal of Circuit Court] Clerk of Circuit Court,
Orange County, Florida.

Indorsed: Deed, J. L. Bryan, commissioner, to George W. Powell. Filed in the office of the clerk of Circuit Court of Orange County, Florida, this Feb. 2, 1884. Recorded in book

3, page 174. T. J. Shine, Clerk, by C. E. Bacon, Deputy Clerk.

Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 24. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1077 Know all men by these presents, that I, Angelina S. Lassiter, of the County of Orange and State of Florida, wife of Wm. P. Lassiter, of said county and state, in consideration of one dollar to me paid by Henry S. Sanford, of Brussels, Kingdom of Belgium, the receipt whereof is hereby acknowledged, have granted, remised, released, conveyed and forever quit-claimed, and by these presents do grant, remise, release and forever quit-claim unto the said Henry S. Sanford and to his heirs and assigns forever all the dower and third, right and title of dower and third and all other right, title, interest, property, claim and demand whatsoever in law and in equity of me, the said Angelina S. Lassiter, of, in and to "The following described tract or parcel of land, lying and being in the State of Florida, County of Orange, to-wit: All of the west half of section nine (9) in township nineteen (19) south of range twenty-eight (28) east, lying north of the Mill Creek, running through said section nine, bounded as follows: Commencing at the middle of the north line running south till it strikes the mill road, then making that road the line until it strikes the hammock near the end of the mill dam, then running eastwardly following the edge of the hammock to the Sulphur Spring, then following that spring run to the creek, including the land between this line and the creek, and from the mill dam following the water edge up the mill pond to the head spring of said Mill Creek and from said head spring line to run due west to section line, excepting eighty (80) acres on the north line previously deeded to William Slade, containing two hundred (200) acres more or less," so that neither I, the said Angelina S. Lassiter, wife of Wm. P. Lassiter, my heirs, executors, administrators nor assigns, nor any other person or persons for me, them, or any of them shall have, claim or demand any dower or third or any other right,
1078 title, claim or demand of, in or to the same or any part thereof, but thereof and therefrom shall be utterly barred and excluded forever. In witness whereof I

have hereunto set my hand and seal this twenty-sixth day of July, A. D. 1882.

[Seal] ANGELINA S. LASSITER.

Signed, sealed and delivered in the presence of:

GEO. W. POWELL.

ANDREW AULIN.

State of Florida,
County of Orange.

On this twenty-sixth day of July, A. D. 1882, before me, Andrew Aulin, a notary public in and for the State of Florida, personally appeared Angelina S. Lassiter, wife of Wm. P. Lassiter, to me known to be the person described in and who executed the foregoing instrument and acknowledged the execution thereof to be her free act and deed for the uses and purposes therein mentioned, and the said Angelina S. Lassiter on a private examination by me, separate and apart from her husband, did acknowledge that the said relinquishment and renunciation of dower was made freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband, the said Wm. P. Lassiter.

[Seal] ANDREW AULIN,
[Notarial Seal] Notary Public.

Indorsed: Angelina S. Lassiter to Henry S. Sanford. Release of dower. Filed in the office of the clerk of Circuit Court of Orange County, Florida, this Feb. 2, 1884. Recorded in book 3, page 177. T. J. Shine, Clerk Circuit Ct., by E. E. Bacon, Deputy Clerk.

Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 25. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1079 No. 96.

Office of Collector of Revenue.

Orange Co., Fla., January 8, 1878.

I, Nat Poyntz, collector of revenue of the County of Orange, in the State of Florida, do hereby certify that I did, at public auction, pursuant to notice given by law as required, on this

8 day of January, A. D. 1878, sell to the State of Florida the lands herein described, for the sum of thirteen dollars and 89 cents, said sum being the amount due and unpaid for taxes, costs and charges on the described lands for the year of our Lord one thousand eight hundred and seventy-seven, that the State of Florida or his assigns will therefore be entitled to a deed of conveyance of such lands in accordance with law, unless the same shall be redeemed within one year by payment of said amount, with interest at the rate of fifty per cent. per annum.

Said lands are described as follows, to-wit:

W 1/2 section nine (9) township nineteen (19) range twenty-eight (28) containing three hundred acres, sold as the property of Geo. C. Powell, in the County of Orange.

Witness my hand, at Orlando, this 8 day of January, A. D. 1878.

NAT. POYNTZ,
Collector of Revenue.

Note.—Any such certificate may be transferred or assigned by the person to whom the same was issued, by such person writing his name on the back thereof.

Office of Commissioner of Lands and Immigration.

Tallahassee, Fla., July 9th, 1881.

Geo. C. Powell, having paid the taxes and expenses of sale of the within land; and having produced the receipts of the collector of revenue for the taxes of years 1878, 1879 and 1880 as evidence of their payment, I do hereby assign, transfer and surrender to him this certificate and all the right, interest and claim of the State of Florida in and to said lands by reason of said sale.

Given under my hand and official seal the date aforesaid.

[Florida State Land Office Seal.]

HUGH A. CORLEY, Com.
Per FRED T. MYERS.

1080 Indorsed: Filed in evidence this August 9th, 1909, as Defendant's Exhibit No. 26. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1081 COPY OF FIELD NOTES

Of the Survey of the Private Claim of Theresa Rodriguez on Big Spring, Sec. 37 Tp. 19 S. R. 28 East and Sec. 41 Tp. 19 S. R. 29 East. Surveyed by M. A. Williams in 1851. Variation 4° East.

Claim of Theresa Rodriguez on Big Spring. Variation 4° East.

From Pine X. R. Ran ....South....
2.50 X N. Line Sec. 8 76.80 E. of N.W. Corner.
Pine N. 60° W. 20 Pine S. 10° W. 15
82.60 X N. line Sec. 17—76.50 E. of N.W. Corner.
Pine N. 20° E. 40 Links.
97.00 X Branch. C—W.
62.65 XN. line Sec. 20—76.70 E. of N.W. Corner.
168.00 Corner.
Pine N. 60° E. 60 X. R.
2nd Line East. (South Line.)
3.80 X W. line Sec. 21. 74.55 N. of S.W. Corner.
Pine S. 69° W. 30 Pine S. 31° E. 20
51.00 To Grass pond.
57.00 X do.
83.80 X West line Section 22 in edge of Branch of White Sulphur Spring 74.60 N. of S.W. Corner
85.00 X Branch or creek.
98.00 To Hamk.
163.65 X West line Sec. 23.—74.65 North of S.W. Corner.
Iron tree S. 89° W. 15
" " S. 30° E. 25
166.00 X Branch C-N.
217.00 To Swamp.
243.58 X W. line Section 24—74.70 North of
1082 S.W. Corner.
Ash S. 70° W. 77 Lks. Maple S. 30° E. 20
270.00 To Hamk.
301.00 X Hamk.
304.00 T/ Bay gall.
306.50 X do.
315.00 To Hamk.
323.40 X East line Sec. 24.—74.80 N. of S.E. Corner.

Cabbage S. 15° W. 30 Cabbage S. 28° E. 12
327.00 Corner.
East Line. North.
5.80 X North line Sec. 19—76.45 W. of N.E. Corner.
Myrtle N. 30° E. 15 Lks.
Myrtle S. 26° E. 20
13.00 To Creek. (Deep)
14.00 X do.
23.00 To Scrub.
30.00 To Swamp.
35.00 To Hamk.
55.00 X do.
60.00 To Pine & Cabbage.
65.00 X " "
78.00 To pine & cabbage.
86.00 X N. line Sec. 18—67.30 West of Grant of Pedro Miranda.
Pine N. 62° E. 50 Pine S. 61° E. 45
104.00 To Hammock. 125.00 X do.
166.06 X. N. line Sec. 7—76.35 West of N.E. Corner.
Cabbage S. 30° E. 50
N. 22° E. 30
168.00 Corner.
Pine N. 50° W. 26 N. R.
North Line. West.
3.50 X West line Sec. 6—78. Chs., South of N.W. Corner.
Pine N. 25° E. 60 Lks. Pine N. 40° W. 70
15.00 To Swamp.
1083 23.00 X. to Hamk.
40.00 Pine & cabbage.
63.60 Burny bay.
83.65 X West line Sec. 1 T. 19 R. 28—77.89 South of N.W. Corner.
97.00 To hammock.
125.00 To creek.
125.00 X do.
163.81 X West line Sec. 2—77.65 South of N.E. Corner.
Water Oak N. 28° W. 41
Live " N. 60° E. 17
167.00 X. hammock.
243.70 X West line Sec. 3—77.60 South of N.W. Corner—last 80 Chs., scrubby.

323.10 X West line Sec. 4 77.85 South of N.W. Corner.
Pine N. 18 W. 15 N. 43° E. 10

326.15 Corner.
There is a large portion of the interior of this claim 1st rate low hammock land & the creek running through is a deep and bold stream.

I, B. E. McLin, commissioner of agriculture of the State of Florida, hereby certify that as such officer, I am by virtue of Chapter 5611, Laws of Florida 1907, the legal custodian of the field notes of the surveys of the United States of the public lands of the State of Florida, and I further certify that the foregoing on pages one to three, inclusive, are true and correct copies of the field notes of the survey of the private claim of Teresa Rodriguez, Sec. 37 Township Nineteen South, Range Twenty-eight East, and Section 41 Township Nineteen South, Range Twenty-nine East, as surveyed by M. A. Williams in 1851. Variation 4° East, as same appears of record in this office and in my custody, as aforesaid.

In testimony whereof, I have hereunto set my hand officially, and have caused to be affixed hereto the seal of the Department of Agriculture of the State of Florida, at the Capitol, in the City of Tallahassee, on this the 19th day of August, A. D. 1909.

B. E. McLIN,
Commissioner of Agriculture
of the State of Florida.

[Seal of the Department of Agriculture.]

1084 Indorsed: Filed in evidence this August 24th, 1909, as Defendant's Exhibit No. 27. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1085 INTERROGATORIES, ETC. REI PERPETUAM.

In the Circuit Court, in and for Lake County, Florida. In Chancery.

Wilson Cypress Company, a Corporation Under and by Virtue of the Laws of the State of Florida, With Its Principal Place of Business at Palatka, in Putnam County, Florida,

versus

All Persons Claiming Any Interest in Section 37, in Township 19, South, of Range 28 East, and Section 41, in Township 19, South, of Range 29, East, Comprising What Is Known and Designated Upon the United States Surveys of the Public Lands, as the Theresa Rodriguez Grant, the Same Being a Spanish Grant, Duly Ratified and Confirmed as Private Property Under and According to and With the Terms of the Treaty Between the United States and the King of Spain, Which Treaty Was Made February 22nd, A. D. 1819.

In this matter now comes the Wilson Cypress Company, a corporation under and by virtue of the laws of the State of Florida, with its principal place of business at Palatka, in Putnam County, Florida, and here briefly and substantially set forth its title, claim and interest in and to the subject matter concerning which it desires to perpetuate the evidence.

Statement.

It claims that for many years prior to April 23d, A. D. 1872, and particularly from February 22nd, 1819, the said Section 37, in Township 19, South of Range 28, East and Section 41, in Township 19, South of Range 29, East, comprising what is known and designated upon the United States survey of the public lands, as the Theresa Rodriguez grant, and designated by the numbered sections above, and containing according to said surveys 5486.46 acres, was private property and so recognized and treated by the United States in its treaty with Spain;

That on April 23d, A. D. 1872, one William Mills received and obtained a tax deed to the said premises herein described, and by good and sufficient deed, conveyed the same premises

on May 3d, A. D. 1872, to one George C. Powell, who then went into actual possession of the whole of said lands in the latter part of that year;

That the said Powell remained in the continuous,
1086 open, exclusive, adverse and notoriously adverse possession of all of said lands until October 27th, A. D. 1881, when he conveyed and surrendered possession thereof, except certain parts therof, which prior to then, he had sold and conveyed to other parties, to one Henry Sanford, who on January 9th, A. D. 1884, by good and sufficient deed of that date, conveyed all of said lands, with the exceptions above referred to, to the Florida Land & Colonization Company, who went into the possession and occupancy thereof, and remained in the actual possession thereof, as to all of said lands, until May 3d, A. D. 1900, when by deed of that date, the Wilson Cypress Company, aforesaid, became seized and possessed thereof, by deed recorded in the public records of Lake County, Florida, in Conveyance Book No. 35, at page 593 thereof;

It claims the fee simple title in and to all of the said lands except two pieces thereof heretofore sold, to-wit: 80 acres in the northwest corner thereof, and 60 acres deeded to Smith & Clifford under and by virtue of the laws of the State of Florida, relating to the acquirement of title to lands by adverse possession, and claims that it is so entitled by having in every particular complied with the provisions of said laws, in letter and spirit, by and through its grantors under whom it claims, the same having been actually possessed by them, for the ordinary use of such occupants, continuously, openly, notoriously, exclusively and adversely to the whole world, under color of title, ever since A. D. 1872;

Names and residences of all persons known to the Wilson Cypress Company, to claim an interest in the subject matter or any part thereof, to-wit: Don Felix Marcos y Roderiguez, of Garuco, in the Island of Cuba, Don Pedro Garcia Marcos, Don Augustin Garcia Marcos, Donna Margarita Garcia y Abrasses, Don Miguel Garcia y Abrasses, Don Luis Garcia y Abrasses, Don Alfonso Garcia y Abrasses, and Don Ricardo Garcia y Abrasses, all of Havana, in the Island of Cuba, Donna Adela Pichardo, Donna Adelaide Garcia Pichardo, Don Urbano Cadina, of Havana, in the Island of Cuba, Rafaela Garcia Pichardo, Don Isidro Zertucha, of Bejucal, in the Island of Cuba, Donna Carmen Garcia Pichardo, Don Maximo Zer-

tucha, of Melena del Sur, in the Island of Cuba, Don
1087 Lorenzo Garcia Pichardo, Quanabacoa, in the Island of Cuba, Don Luis Garcia Pichardo, of Havana, in the Island of Cuba, Don Esteben Garcia Pichardo, of Vedado, in the Island of Cuba, Don Jausto Garcia Pichardo, of Havana, in the Island of Cuba, Don Juan Bantista, Don Juan Banista Diaz y Garcia, of Guiness, in the Island of Cuba, Don Rafael Bantista Diaz y Garcia, Donna Flora Bantista Diaz y Garcia of Guiness, in the Island of Cuba, Teresa del Pozo y Marcos, Pilar del Pozo y Marcos, Isidro Martin Martinez, Quintin Del Pozo y Marcos, Enrique del Poso y Marcos, Nicholas del Poso y Marcos, Simeon del poso y Marcos, Ladislas del Poso y Marcos, Donna Amelia Nunez, Eustava Saladrigas, Don Alejandro Arturo Nunez, Don Alfredo Nunez, Don Erneso Nunez, of Havana, in the Island of Cuba, Leo P. Westcott, of Orlando, Florida, Marion C. Crumpler, of Chattanooga, Tennessee; W. H. Bishop, H. W. Bishop and N. C. Bishop, co-partners under the firm name and style of "The Bank of Eustis", of Eustis, Florida; J. C. Krekei, of Sioux City, Iowa; The Buffum Loan & Trust Company, a corporation, etc., of Ocala, Florida; N. P. Todd, and John Starke, whose residences are unknown.

Names of Witnesses Proposed to Be Examined.

Ivey Royall, of Cassia, Florida; L. J. Owens, of Cassia, Florida; George W. Powell, of Fort Myers, Florida; William P. Lassiter, of Oveido, Florida; William Slade, of Lockhart, Florida; Ed Thomas, Mr. Fig, of St. Patersburg, Florida; C. C. Boyken, of Bessenger, Florida; J. W. Wofford, of Cassia, Florida; Robert Rose, of Cassia, Florida; Frank Griggs, of Longwood, Florida; Frederic H. Rand, of Sanford, Florida; Alonzo Royall, of Cassia, Florida; J. E. Ingraham, of St. Augustine, Florida; E. R. Trafford, H. B. Smith, of Miami, Florida; Frank Trowell, of Daytona, Florida, and William Beardall.

Interrogatories to Be Propounded to the Witnesses.

1—State your name, age and residence or residences, since May 3d, 1872?

2—State, if you know, of your own knowledge, the premises and a tract of property known as the Theresa Roderiguez grant, sometimes called the Powell grant, and known on the United States surveys of the public lands as Section 37 in Township 19 South of Range 28, East and Section 41 in Township 19 South of Range 29, East, comprising a tract of land of 5486.46 acres or thereabouts, situated in Lake County, Florida?

3—Give here a statement of all of the facts within your own knowledge, as to who, when and what manner (state fully), have been the occupants, had control of, and purported to own this land? State how you know these facts, and your means and opportunity to know them?

1088 4—State whether any person other than those you have mentioned have ever been in the actual occupancy of these premises?

5—Whether such occupancy and control, management and use of these premises as aforesaid, has been continual, open, notorious, exclusive and adverse to all and every other person or persons?

6—State whether you are interested in any manner at this time or claim any interest in and to said lands?

7—State anything in your knowledge, particularly, as to the possession and acts of ownership, done and performed by and under the control of George C. Powell, Henry S. Sanford, and the Florida Land and Colonization Company, or their agents and employes, in and about and upon the lands above and hereinbefore described?

8—Who is now in the actual occupancy of these lands?

9—State whether, if you know, any other persons are at this time actually occupying any part of these lands, other than the Wilson Cypress Company herein?

The clerk of the Circuit Court of Lake County, Florida, is required by the applicant, the Wilson Cypress Company, to publish in a newspaper published in said county, once a week for four consecutive weeks, a notice to all persons interested in said subject matter, stating the time and place when the ap-

plication for a commission will be made, the name of the applicant and the names of the witnesses, and the subject matter of the examination.

And this applicant doth hereby and by virtue of the provisions of Sections 1138, 1139, 1140 and 1141 of the Revised Statutes of Florida make application for the purpose of obtaining a commission as therein provided.

WILSON CYPRESS COMPANY.
By E. E. HASKELL,
Its Attorney and Agent, Applicant.

May 18th, 1900.

Tavares, Florida, May 18th, 1900.

The foregoing application coming on before me, on this day, it is thereupon ordered that the same be published in the "Tavares Herald", a newspaper published in said Lake County, Florida, once a week for four consecutive weeks, as a notice to all persons interest in said subject matter, that at 3 o'clock P. M., on June 20th, 1900, at my office in Tavares, said application for a commission will be made.

1089 Witness my hand and seal of the Circuit Court of Lake County, at Tavares, the date above.

H. H. DUNCAN,
Clerk Circuit Court,
Lake County, Fla.

[Circuit Court, Lake County, Florida, Seal.]

(Indorsed): "# 625. In matter of Wilson Cypress Company. Application to rei perpetuam as to Theresa Roderiguez grant. Filed May 18th, 1900, in office of clerk Circuit Court in Lake County, Florida. H. H. Duncan, Clerk."

In the Circuit Court in and for Lake County, Florida.

In the matter of the application of the Wilson Cypress Company, a corporation, under the laws of Florida, to perpetuate the testimony of certain witnesses mentioned in its said application.

I, H. H. Duncan, the clerk of the Circuit Court in and for Lake County, Florida, do hereby certify that on May 25th, A.

D. 1900, I sent by mail, postage thereon prepaid, to each and every one of the persons named in said application "as claiming an interest in the subject matter, or any part thereof", a true copy of the published notice hereto annexed, said mail package in each case addressed to such person, as designated in said application.

Witness my hand and the seal of the Circuit Court of Lake County, Florida, this June 20th, A. D. 1900.

H. H. DUNCAN,
Clerk Circuit Court in and for Lake County, Florida.

[Seal of Circuit Court, Lake County, Florida.]

1090 Application to rei perpetuam heretofore printed at page 938.

* * * * * * * *

1094 State of Florida,
Lake County.

I, H. H. Duncan, clerk Circuit Court in and for said county and state, do hereby certify the hereto attached printed notice is a true and full copy of the original order on file in my office.

Witness my hand and seal of said Court at Tavares, Florida, this 22d May, 1900.

[Seal of Circuit Court, Lake County, Florida.]

H. H. DUNCAN,
Clerk.

State of Florida,
County of Lake.

I, R. S. Hewett, hereby certify under oath that I am the business manager of "The Tavares Herald", a newspaper published regularly, at Tavares, in Lake County, Florida, and that the foregoing notice was so published, in the said "The Tavares Herald", once a week for four consecutive weeks, to-wit: On May 18th and 25th, A. D. 1900, and on June 2nd and 9th, A. D. 1900.

R. S. HEWETT.

Sworn to and subscribed before me this June 20th, A. D. 1900.

E. E. HASKELL,
Notary Public,
State of Florida, at Large.

[Notarial Seal]

(Indorsed): "Filed June 20th, 1900, in office of clerk Circuit Court, Lake County, State of Florida. H. H. Duncan, Clerk."

1095 In the Circuit Court in and for Lake County, Florida.

State of Florida,
County of Lake.

To L. A. Field and R. F. Kriegsman:
Greeting:

Whereas, there is a certain controversy now pending in said Court wherein the Wilson Cypress Company, a corporation under the laws of Florida, with its principal place of business at Palatka, in Putnam County, Florida, is desirous of perpetuating the testimony of certain witnesses, to-wit: The testimony of the following named material witnesses, that is to say: Ivey Royal, L. J. Owens, J. W. Wofford, Robert Rose, and Alonzo Royal, all of Cassia, Florida; George W. Powell, of Fort Lyers, Florida; William P. Lassiter, of Oveido, Florida; William Slade, of Lockhart, Florida; Mr. Fig, of St. Petersburg, Florida; C. C. Boyken, of Bassenger, Florida; Frank Griggs, of Longwood, Florida; Frederic H. Rand, of Sanford, Florida; J. E. Ingraham, of St. Augustine, Florida; H. B. Smith, of Miami, Florida; Frank Trowell, of Daytona, Florida; William Beardall, E. R. Trafford and Ed Thompson:

Know ye: That we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you are hereby authorized and required to cause each of the said above named witnesses, or any of them, personally to come before you and after being duly sworn and having duly sworn him, you will take his testimony upon the direct interrogatories which are hereto annexed:

And the said testimony taken as aforesaid, you are to return under your hands and seals according to law in such cases

made and provided to me, the clerk of the Circuit Court of Lake County, Florida, together with this writ, and all papers hereto attached.

Witness H. H. Duncan, the clerk of the Circuit Court in and for Lake County, Florida, on this the 20th day of June, A. D. 1900.

H. H. DUNCAN,
Clerk of the Circuit Court in and for Lake County, Florida.

[Seal of Circuit Court, Lake County, Florida.]

1096 IN MATTER OF REI PERPETUAM.

In the Circuit Court in and for Lake County, Florida.

Wilson Cypress Company, a Corporation Under the Laws of Florida,

versus

All Persons Interested in the Theresa Roderiguez Grant, Being Section 37 in Tp. 19, South of Rg. 28 East, and Sec. 41 in Tp. 19, South of Rg. 29 East.

And now in the above matter come L. A. Field and R. F. Kreigsman, the commissioners herein appointed to take the testimony of the witnesses mentioned in the commission hereto attached, who being by me first duly sworn, each for himself says: That he will well, faithfully and truly perform the duties of such commissioner; that he is not of kin to nor the attorney nor the agent of any of the parties, nor interested in the result.

L. A. FIELD.
R. F. KRIEGSMAN.

Sworn to and subscribed before me this June 25th, A. D. 1900.

E. E. HASKELL,
Notary Public,
State of Florida, at Large.

[Notarial Seal]

State of Florida,
Lake County.

Know all men herefrom, that pursuant to and by virtue of the commission hereto attached, after being duly sworn to well and faithfully perform our duties as such commissioners, we proceeded to our duties as follows:

After causing the witnesses hereinafter mentioned to appear before us we took the following testimony, as follows, to-wit:

The witness L. J. OWEN, being by us first duly sworn, testified as follows, that is to say:

In answer to the 1st interrogatory:

My name is L. J. Owens; my age is 43 years; I have always resided here at Cassia, within a mile or so of my present residence.

In answer to the 2nd interrogatory:

I do know of my own knowledge the said lands and have known them well ever since 1872.

1097 In answer to the third interrogatory:

The first person I knew to occupy the said lands was one the Rev. George C. Powell, who moved on to said property in the latter part of 1872. He was the first and only person to my knowledge who claimed to own this property, at that time, and was the only one so claiming and having possession of the same until some time in 1882. He was getting old and feeble. He married me to my wife in 1881, and lived on this property for some little time after that when he moved away. In 1874 I helped my father to get out some cypress drawn shingles, which he, with Mr. Ivey Royal, bought from Mr. George C. Powell; these shingles were made from cypress timber bought by them from him, and was taken from the eastern end of this grant. I was with my father when Mr. George C. Powell showed him the east and west lines of said grant. I am a surveyor and know these lines so shown him then to be the true lines of said grant, as he then represented. I leased the saw mill, which said Powell had erected on the west end of said grant when he first took possession of said grant, (it was a

grist mill, cotton gin and saw mill), of Mr. Powell in 1881, and run it the greater part of 1881 and part of 1882.

In the early time of his going on said lands he sold and deeded parts of said grant to his son, George W. Powell, and William P. Lassiter, his son-in-law, who both settled on said grant and built them houses and cultivated them. George W. Powell grew an orange grove there.

He also sold and conveyed to one William Slade a portion of the said grant, about this time, soon after he went into possession of said grant.

George C. Powell, the first thing, built him a house and the mill I have mentioned, and continued to live there continuously until the time I have stated.

Smith & Clifford also bought a portion of this grant from the old man Powell, some time after.

After the Powells went away I quit running the mill.

It was sold to Henry S. Sanford in 1881. He sold
1098 to the Florida Land & Colonization Company, in 1884, and they have had and owned it ever since then, keeping someone on it for them continuously. The foregoing statements are of my own knowledge and observation, and are clearly and certainly known and recollected by me.

In answer to the 4th interrogatory:

There has never during all this period been anyone in the actual occupancy of these lands, other than such persons as have so occupied them under and subject to the parties mentioned, the said George C. Powell, Florida Land and Colonization Company, and Henry S. Sanford, and the present possessors and owners, the Wilson Cypress Company. The said Wilson Cypress Company are now actually in possession and occupancy of all of said grant (except 80 acres in the northwest corner and 60 acres owned by Smith & Clifford), and they are exercising the care and preservation of said lands and its timber now and since May 3rd, 1900.

In answer to the 5th interrogatory:

It has.

In answer to the 6th interrogatory:

I am not, other than I am now employed to hold possession

of said lands for the Wilson Cypress Company, and for them to prevent others from trespassing upon said grant.

In answer to the 7th interrogatory:

George C. Powell occupied these lands as against everybody else from 1872 until he sold to Henry S. Sanford; cut timber from this grant; sold timber therefrom, and did everything usually done by owners of wild lands, to the exclusion of every person in the world except as to those to whom he from time to time granted rights and privileges therein and therefrom. Henry S. Sanford was a capitalist and as I understand bought this grant for speculation, no one ever disputed or disturbed his possession or disputed his ownership. The Florida Land & Colonization Company purchased from him and have never been disturbed in their possession thereof, but about 1891, I understood that some Spanish heirs of Theresa Roderiguez were claiming this property, and at about that time this Colonization Company placed Ed Thomas in the actual
1099 possession and occupancy of this grant. He was on there as above for said Colonization Company before 1891, several years before 1891. Since then they have kept some one actually in charge thereof up to their sale to the Wilson Cypress Company.

In answer to the 8th interrogatory:
The Wilson Cypress Company.

In answer to the 9th interrogatory:
No, there is not.

L. J. OWENS.

Sworn to and subscribed before us on this June 25th, 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And, also, the witness J. W. WOFFORD, who being by us first duly sworn, testified as follows, that is to say:

In answer to the 1st interrogatory:
My name is J. W. Wofford; about 27 years old; I was born

near Orlando, in Orange County, Florida, and have lived here in Cassia about 15 years.

In answer to the 2nd interrogatory:
I know this Grant property, have been on it often.

In answer to the 3d interrogatory:
When I first knew this property it was owned and possessed by the Florida Land & Colonization Company. In July or August, 1897, I was employed by this company to live upon this grant, and up to the first of May, A. D. 1900, I have continued to live upon it, holding possession for them. All this is of my own knowledge.

In answer to the 4th interrogatory:
I have never known of any other persons owning or claiming to have possession of said grant.

In answer to the 5th interrogatory:
It has been continual, open, notorious, exclusive and adverse to all and every person or persons.

1100 In answer to the 6th interrogatory:
I am not and have none.

In answer to the 7th interrogatory:
I know of nothing else other than my former testimony.

In answer to the 8th interrogatory:
The Wilson Cypress Company.

In answer to the 9th interrogatory:
There are no others.

J. W. WOFFORD.

Sworn to and subscribed before us on this June 25th, A. D. 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

The witness ALONZO ROYAL, who being first duly sworn by us, testified as follows, that is to say:

In answer to the 1st interrogatory:
My name is Alonzo Royal; 41 years; have resided right here in Cassia all my life since I was two years of age.

In answer to the 2nd interrogatory:
I do.

In answer to the 3d interrogatory:
It was about 1872, I think in the fall of that year, that George C. Powell, he was a minister of the Gospel, moved onto this grant. He first built a water mill, a saw, gin and grist mill. Between 1872 and 1881 I run this mill several times, once nearly losing my hand in sawing. He was dickering and trading parts of this land from time to time all the time he was in possession, which was from 1872 till 1881 or 1882. He, George C. Powell, bargained the cedar timber on this grant to one W. C. White, in 1877, the fall, who cut considerable of it from all parts of this grant, that winter, the next spring, and next summer, but was stopped in the next winter by Henry S. Sanford, who held a mortgage on this land and didn't want it cut. White after that was allowed to go and get the cedar he had cut. Powell then sold this land, except such parts of it he had sold to other parties, to Henry S. Sanford,
1101 who sold the same land to the Florida Land and Colonization Company; this company sold timber and cabbage palmetto to certain parties after they bought it; they sold some timber to me; Powell also built houses on this land, this grant, and other parties who bought of him also built houses on certain parts of this grant land; I lived right in the neighborhood of this grant, was here at the time, took part in some of them, and clearly recollect what I have testified to, and know of my own knowledge what I have stated.

In answer to the 4th interrogatory:
Not since 1872.

In answer to the 5th interrogatory:
It has.

In answer to the 6th interrogatory:
I am not.

In answer to the 7th interrogatory:
I have answered all that I know of the facts in my knowledge.

In answer to the 8th interrogatory:
I understand that the Wilson Cypress Company is.

In answer to the 9th interrogatory:
Not that I know of.

ALONZO ROYAL.

Sworn to and subscribed before us, this June 25th, 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And, also, the witness IVEY ROYAL, who being by us first duly sworn, testified as follows, that is to say:

My name is Ivey Royal; 69 years old; I have lived since 1872 right here on this place.
The above in answer to the 1st interrogatory.

1102 In answer to the 2d interrogatory:
Yes, I know pretty well about it; I have been on the land frequently, time and again.

In answer to the 3d interrogatory.
In 1872 George C. Powell, who was a Baptist preacher, moved on to this land and set and put up a mill for grinding grist, sawing lumber, and ginning cotton; he built a house and other buildings, he continued to live on there and run the mill for some years, I think for eight or ten years. He cut timber off this grant, sawed it in his mill and sold it. He sold some cedar to a man by the name of White and claimed to own the whole grant. From time to time during the time he was in possession of these lands he sold and conveyed parts of this grant to other parties. He sold to me and Andrew Owens, I think two or three years after he first went on there, some

cypress timber from which we made some shingles, for which we paid him. Powell sold this grant, the whole of it except such parts of it he had before sold to other parties, to Henry S. Sanford; I don't exactly recollect the dates, it was somewhere about 1881 or 1882; Sanford was said to be a capitalist. He sold this land to the Florida Land and Colonization Company some six, seven or eight years ago; this company owned this land when Mr. Beardall came out and surveyed it for them; it may have been longer ago than I have stated; I state from recollection, never having expected to be called upon about it and having taken no particular notice as to dates; the foregoing is the best of my recollection, some of them I took part in, I was in the neighborhood and just recollect what happened and occurred at the time.

In answer to the 4th interrogatory:
Not to my knowledge.

In answer to the 5th interrogatory.
It has.

In answer to the 6th interrogatory.
None whatever.

In answer to the 7th interrogatory:
I have stated them above.

1103 In answer to the 8th interrogatory:
My understanding is that the Wilson Cypress Company is.

In answer to the 9th interrogatory:
I don't know of any other, there are none others.

IVEY ROYAL.

Sworn to and subscribed before us on this June 25th, A. D. 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And also the witness FREDERIC H. RAND, who being by us first duly sworn, testified as follows, that is to say:

My name is Frederic H. Rand; my age is 54 years; at Longwood, Florida.
The above in answer to the 1st interrogatory.

In answer to the 2nd interrogatory:
I do know it and have had control of it for many years.

In answer to the 3d interrogatory:
This property was turned over in my charge in February, 1887, by Henry S. Sanford, who was chairman of the board of directors of the Florida Land & Colonization Company, I at that date taking charge of the company's property in America as their agent and attorney in fact; his property has been in my control and management ever since; I have regularly returned this property for taxes, in this company's name, and paid the taxes assessed thereon ever since; I have had parts of this property surveyed at different times since it has been in my control as aforsaid; in 1889 the company by myself as attorney conveyed a portion of this grant to C. E. Pierce, at various times since I have had charge of this property I have sold timber therefrom to J. B. Anderson of Sorrento, Florida and to others; I think also I sold some to one Alonzo Roval; since the summer of 1888 I have kept some one on the lands in possession and occupying the same for my said company. I was the one who had the things done and was in the employ of said company; and therefore know whereof I speak.

1104 In answer to the 4th interrogatory:
None to my knowledge, and I have taken every precaution to prevent any one else to do so.

In answer to the 5th interrogatory:
It has.

In answer to the 6th interrogatory:
I do not.

In answer to the 7th interrogatory:
My answer to the 3d interrogatory answers this.

In answer to the 8th interrogatory:
The Wilson Cypress Company.

In answer to the 9th interrogatory:
Not to my knowledge.

FREDERIC H. RAND.

Sworn to and subscribed before us, on this June 26th, 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And also the witness WILLIAM BEARDALL, who being by us first duly sworn, testified as follows, that is to say:

In answer to the 1st interrogatory:
My name is William Beardall; 46 years; lived in Sanford, Florida, since the fall of 1881.

In answer to the 2nd interrogatory:
I do, have been on it a number of times; I am a surveyor and civil engineer.

In answer to the 3d interrogatory:
When I first knew this land, with the exception of 80 acres and another tract of 60 acres, Henry S. Sanford owned it; the trustees of the Florida Land & Colonization Com-
1105 pany purchased it from him. This company have owned and been in possession of it ever since up to the time they sold it to the Wilson Cypress Company; I have been employed several times by the company to survey parts of this land; when this property was purchased by this company I was then the assistant manager of this company; and these statements are from my own actual knowledge.

In answer to the 4th interrogatory:
Not to my knowledge during that period.

In answer to the 5th interrogatory:
It has.

In answer to the 6th interrogatory:
No.

In answer to the 7th interrogatory:
When Sanford took possession from the Powells, in the winter of 1881 and 1882, Powell had a house and buildings and a growing and bearing orange grove upon this land, and a small saw mill was in operation; the first thing Mr. Sanford did was to repair the saw mill dam and cultivated the grove; the Florida Land & Colonization Company regularly cultivated this grove until the freeze, and from time to time sold pine, cypress and cedar timber from off this grant; and also sold part of the land.

In answer to the 8th interrogatory:
I don't know.

In answer to the 9th interrogatory:
Not that I know of.

WILLIAM BEARDALL.

Sworn to and subscribed before us, on this June 26th, 1960.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And also the witness FRANK GRIGGS, who being by us first duly sworn, testified as follows, that is to say:

1106 In answer to the first interrogatory:
Frank H. Griggs; I am known as Frank Griggs generally; 47 years; in 1875 or 1876 I was living at Hawkinsville, about ten miles from Cassia, Florida; and before then at Orlando; about in 1888 the latter part of that year I moved to Longwood, Florida, and have lived there ever since. Cassia was the voting place for Hawkinsville, Florida.

In answer to the 2d interrogatory:
I know this grant property used to go to the mill and have bought lumber there.

In answer to the 3d interrogatory:

The old preacher George C. Powell was the first one I knew to be on this land; his son George lived there with him; William Slade lived there too and worked in the mill, it was a water mill, sawed lumber and ground corn, I think it was also for ginning cotton; I never knew any one but the Powells to be in possession of this land and never knew of any one but the old preacher to pretend to own this land; he built houses on this grant and set out orange trees and planted crops; the fact is that this place was the old preacher's home place; I know these facts of my own knowledge and saw them there; have had my own corn ground there often while I lived there.

In answer to the 4th interrogatory:

Not as far as I know; they are the only ones, the Powells and Slade.

In answer to the 5th interrogatory:

It was to the best of my knowledge.

In answer to the 6th interrogatory:

I have never had.

In answer to the 7th interrogatory:

I have already answered all I can recollect.

In answer to the 8th interrogatory:

The last I knew the Florida Land & Colonization Company. Mr. Rand is their agent.

In answer to the 9th interrogatory:

1107 I don't know anything about this, as it was several months ago since I talked about this matter with Mr. Rand.

FRANK H. GRIGGS.

Sworn to and subscribed before us, on this June 26th, 1900.

L. A. FIELD, Commissioner.

R. F. KRIEGSMAN, Commissioner.

And also the witness WILLIAM LASSITER, who being by us first duly sworn testified as follows, that is to say:

In answer to the 1st interrogatory:
William P. Lassiter; I will soon be 53 years of age; I was on the Powell grant in 1872; then I moved to Oviedo, Florida, in 1875; then here in 1877 to Buda, and have been here ever since.

In answer to the 2nd interrogatory:
I do.

In answer to the 3d interrogatory:
In 1872, in the spring, we moved on to this grant; George C. Powell, who was my father-in-law, I married his daughter, Angeline S. Powell that was, she is now living with me here, bought this property from William Mills, getting a deed from him; I think we moved on to the property just before we got the deed; everything done was done under George C. Powell, who had the title to this land; we first built a shelter, then went to work on the mill timbers, getting the timbers from the grant, probably within a quarter of a mile from the mill site; we cleared up three little farms, there was three families of us; after we built the mill it was run, it was a saw mill, grist mill and cotton gin mill; the saw mill was run regularly, we sawed pine timber, cutting it from off this grant; I was familiar with the boundaries of this grant, I chopped most of the logs and done some of the hauling to the mill; the lumber was sold generally round in the neighborhood and we shipped some of it to Sanford, Florida; these farms were regularly cultivated each year I was there; Mr. Powell and his son George, my brother-in-law, stayed on the grant after I moved away in 1875, and continued to cultivate and improve their places on the grant; Mr. Powell leased the mill from
1108 time to time while he owned this property to different persons, up to the time he sold and conveyed the grant except such parts of it as he had conveyed to other parties, to Henry S. Sanford; I was an eye-witness to the whole of the matters and was a partner in the business.

In answer to the 4th interrogatory:
There was not at that time I have testified to any other per-

son than George C. Powell, and those to whom he had sold or given permission in possession of any part of this grant property.

In answer to the 5th interrogatory:
It was.

In answer to the 6th interrogatory:
No, sir; I do not.

In answer to the 7th interrogatory:
I have told what George C. Powell did, as to the others I don't know anything about what they did after he sold to Sanford.

In answer to the 8th interrogatory:
I don't know. Since I left I haven't taken much interest in this land.

In answer to the 9th interrogatory:
I don't know anything about it now.

W. P. LASSITER.

Sworn to and subscribed before us, this June 27th, 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And also the witness WILLIAM SLADE, who being by us first duly sworn, testified as follows, that is to say:

In answer to the 1st interrogatory:
My name is William Slade; my age is 65 years; I have lived the principal part of the time in Orange and Lake Counties; my home is in Lake County now.

In answer to the 2nd interrogatory:
I do.

In answer to the 3d interrogatory:

1109 I think it was in January and certainly by March, 1872, that George C. Powell, I married his daughter in 1858, moved on to this grant; in 1874 I bought

an interest in the milling business carried on on this grant, and moved there with my family; I knew that he, Powell, built the mill, for there was nothing on there when he went up there; when I first went there Mr. Powell hired me to run the mill for him, and in the fall I bought the mill and forty acres of this land, and a half interest in all the timber on the grant, and went to work cutting it up into lumber; I bought of Mr. Powell; before I come he had deeded part of said grant lands to his son, George W. Powell and William P. Lassiter, and they had built and made improvements on the grant and were in actual possession of the whole of said grant; I cut the timber as I needed it of pine, hickory, poplar and cedar from the land as needed in the mill and never was hindered or molested by anyone, and it was generally known, in and for miles around, that we were in possession and milling the lumber on this grant. I was there on this grant in said mill business as above stated from early in 1874 until 1880, when I sold my interest in the mill and grant lumber to George W. Powell; I lived close to this property there after until February, 1899, I was a continual resident there and know pretty much everything that went on around there until I moved away, and particularly as to this grant from the Powells this property went to Henry S. Sanford, I know that L. J. Owens long at the last of the Powells' owning this property leased this mill to him, and he run it a while; Sanford sold out to the Florida Land & Colonization Company, about 1893, I think, I am not positive as to the dates, they put a man by the name of Jones in possession on the property and after him they put one Ed Thomas to live on the grant, they were compelled to do this on account of some claim by parties claiming to be heirs of the property, then one McIntosh lived on there for them, then C. C. Boyken lived on there for them, then Mr. Fig, and Wofford, who was the last one on there for them; I know these things because I was right there, observed them, know them and clearly recollect about it.

1110 In answer to the 4th interrogatory:
None, sir.

In answer to the 5th interrogatory:
It was. There was no other persons whatever during the time the Powells went on this grant that were in possession

of these lands. The possession of these persons was adverse to that of every other person in the world.

In answer to the 6th interrogatory:

None; I do not.

In answer to the 7th interrogatory:
I think these parties mentioned did everything and acted as other owners of such property would do under like circumstances.

In answer to the 8th interrogatory:
I dont know.

In answer to the 9th interrogatory:
None that I know of.

WILLIAM SLADE.

Sworn to and subscribed before us, on this June 28th, 1900.

L. A. FIELD, Commissioner.
R. F. KRIEGSMAN, Commissioner.

And now in this January 10th, 1901, we, the commissioners herein appointed and qualified, having performed the duties of our trust to the best of our ability in the premises, do hereby return into Court, to the clerk of the Circuit Court of Lake County, Florida, the foregoing testimony taken before us in the premises, and do under our hands and seals certify and attest to the correctness thereof in every particular.

Witness our hands and seals at Eustis, in Lake County, Florida, the date above.

[Seal] L. A. FIELD, as Commissioner.
[Seal] R. F. KRIEGSMAN, as Commissioner.

1111 State of Florida,
County of Lake.

Personally came before me on this January 10th, 1901, L. A. Field and R. F. Kriegsman, the commissioners above described, and made oath that the foregoing testimony, and acts performed by them in the premises, and attached to this commission from the clerk of the Circuit Court of said Lake

County, Florida, exhibits and shows in truth and fact their actual doings, and the testimony actually given before them by the several witnesses examined by them as directed in said commission.

Witness my hand and notarial seal the date above.

E. E. HASKELL,
Notary Public State of Florida, at Large.

[Official Seal]

(Indorsed:) #625. In Circuit Court, Lake County, Florida. In re "Rei Perpetuam" Wilson Cypress Co. vs. All Persons Interested in Sec. 37, Tp. 19 S., R. 28 E., and Sec. 41, Tp. 19 S., R. 29 E. (Theresa Roderiguez Grant.) Returned and filed this 10th day of January, 1901, A. D., and recorded in Deed Record No. 39 on pages 1 to 23, and the record verified.

H. H. DUNCAN,
Clerk Lake Co., Fla.

[Seal of Circuit Court, Lake County, State of Florida]

State of Florida,
County of Lake.

I, H. H. Duncan, the clerk of the Circuit Court in and for Lake County, State of Florida, hereby certify that the foregoing sixteen pages is a true and correct copy of the original papers on file and in my said office, and that the same are a true and correct copy of the record thereof, as re-
1112 corded in Deed Record number 39, on pages 1 to 23 inclusive, in the public records and registry of deeds in Lake County, in the State of Florida.

Witness my hand and official seal, the seal of said Circuit Court of Lake County, State of Florida, on this tenth day of April, A. D. 1909.

H. H. DUNCAN,
Clerk of the Circuit Court in and for Lake County, in the State of Florida.

[Seal of Circuit Court]

Indorsed: Filed in evidence, this August 24, 1909, as Defendant's Exhibit No. 28. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1113 To All Whom These Presents Shall Come—Greeting:

Whereas, at a sale of land by J. R. Montague, collector of revenue of the County of Orange, at public auction at Orlando, in said County of Orange, on the 6th day of July, 1886, for the non-payment of the taxes levied and assessed thereon for the year 1885 and remained unpaid on the day of such sale, together with the cost and charges due therewith, the following described pieces or parcels of land, to-wit:

N. W. 1/4 of N. E. 1/4 of S. E. 1/4, Section 2, Township 19 S., Range 29 East, 10 acres more or less, for the sum of $2.38. The N. 1/2 of S. E. 1/4, Section 36, Township 21 S., Range 28 E., eighty (80) acres, more or less, for the sum of $6.48. The N. W. 1/4 of S. W. 1/4 Section 36, Township 21 S., Range 28 E., 40 acres more or less, for the sum of $3.20. Lot 27, Block Q Gotha, for the sum of $3.05. Lots 1 and 2, Block 22, Hughey's Addition to Kissimmee, for the sum of $8.12. The N. 1/2 of S. 1/2 of E. 1/2 of E. 1/2 of S. W. 1/4 of N. E. 1/4 of S. E. 1/4 of S. W. 1/4 Section 26, Township 22 S., Range 29 E., for the sum of $6.64. Lots 9 and 10, Block 5, T. 1, Sanford, for the sum of $9.43. Lots 9, 10, 11 and 12, Block 3, Prescott's Addition to Eustis, for the sum of $2.37. The S. W. 1/4 of S. W. 1/4 Section 30, Township 17 S., Range 28 E., 40 acres more or less, for the sum of $3.70. The N. W. 1/4 of N. E. 1/4 of S. W. 1/4 Section 31, Township 21 S., Range 30 E., 10 acres more or less, for the sum of $2.39. House and Lots 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, Fort Mason, 80/100 acres, more or less, for the sum of $4.02. The E. 1/2 of N. E. 1/4, S. W. 1/4 of N. W. 1/4, less 12 acres, Section 22, Township 22 S., Range 29 E., for the sum of $33.12. Blocks OL, JS, KL, NL, Bass Addition to Kissimmee, for the sum of $4.85. The S. E. 1/4 of N. W. 1/4, W. 1/2 of S. E. 1/4, E. 1/2 of S. W. 1/4, S. W. 1/4 of N. E. 1/4, Section 27 Township 18 S., Range 26 E., 240 acres more or less for the sum of $6.43. The N. E. 1/4 of N. E. 1/4 of N. W. 1/4 of N. E. 1/4, Section 16, Township 21 S., Range 29 E., 2 1/2 acres, more or less, for the sum of $2.39. The E. 1/2 of S. E. 1/4 of S. E. 1/4, Section 22, Township 21 S., Range 29 E., 20 acres, more or less, for the sum of $6.06. Lot 3, Block one (1), Whilden's Addition to Orlando, for the sum of $9.76.

The S. 1/2 of S. E. 1/4, Lot 11, Summerlin's Addition to Orlando, for the sum of $4.85. The S. 1/2 of S. E.
1114 1/4, Section 3, Township 20 S., Range 27 E., 80 acres, more or less, for the sum of $9.76. Lot 5 Block 10, Tier B. Sanford, for the sum of $4.85. The W. 1/2 of S. W. 1/4, S. E. 1/4 of N. W. 1/4, Section 3, Township 22 S., Range 29 E., 120 acres, more or less, for the sum of $4.85. Lots 6, 7, 8, Block 9, Tier 6, Sanford, for the sum of $14.36. Lots 3 and 4, Block 16, Prescott's Addition to Eustis, for the sum of $2.70. Lot 6, K. & N. Addition to Orlando, for the sum of $8.12. The E. 1/2 of N. 1/2 of W. 1/2 of Lot 4, Block 9, Patrick's Addition to Orlando, for the sum of $5.67. The W. 1/2 of N. W. 1/4, N. W. 1/4 of S. W. 1/4, S. E. 1/4 of N. W. 1/4, Section 19, Township 21 S., Range 30 E., 1/4 160 acres, more or less, for the sum of $17.57. The N. E. 1/4 of S. E. 1/4, Section 21, Township 21 S., R. 30 E., 40 acres, more or less, for the sum of $4.85. Block D, Bass Addition to Kissimmee, for the sum of $6.48. Lot 4, Block 3, T. A. Sanford, for the sum of $14.35. The S. W. 1/4 of S. E. 1/4, E. 1/2 of S. E. 1/4 of S. W. 1/4, Section 35, Township 20 S., Range 29 E., 60 acres, more or less, for the sum of $12.72. The N. W. 1/4 of N. W. 1/4, Section 7, Township 23 S., Range 27 E., 40 acres, more or less, for the sum of $11.41. The N. E. 1/4 of S. W. 1/4, Section 32, Township 20 S., Range 29 East, 40 acres, more or less, for the sum of $14.85. The S. E. 1/4 of S. W. 1/4, Section 14, Township 18 S., Range 27 E., 40 acres, more or less, for the sum of $7.80. The N. 1/2 of S. W. 1/4 of S. E. 1/4, Section 1, Township 18 S., Range 26 E., 20 acres, more or less, for the sum of $6.16. Lots 1 and 2, Block O, Bass Addition to Kissimmee, for the sum of $8.12. Lots 1 and 2, Block "FF," Patricks Addition to Kissimmee, for the sum of $14.36. The N. 1/2 of S. 1/2 of N. E. 1/4 of S. W. 1/4, Section 14, Township 19 S., Range 26 E., 10 acres, more or less, for the sum of $6.16. The S. E. 1/4 of N. W. 1/4 of N. E. 1/4, Section 22, Township 19 S., Range 26 E., 10 acres, more or less, for the sum of $4.01. Lot No. 1, Section 1, N. 1/2 of Lot 2, Lots 3 and 4, N. W. 1/4 of S. W. 1/4, S. W. 1/4 of S. W. 1/4, Section 2, Township 18 S., Range 25 E., S. W. 1/4 of N. E. 1/4, Section 3, S. E. 1/4 of N. E. 1/4 of N. E. 1/4, S. W. 1/4 of S. E. 1/4, Section 11, Township 18 S., Range 25 E., 500 acres, more or less, for

the sum of $11.85. Lot 2, Block 10, T. 9, Sanford, for the sum of $7.80. Lots E and T, Block 3, Tavares, for the sum of $4.01. The S. W. 1/4 of S. E. 1/4, Section 24, Township 20 S., Range 28 E., 40 acres, more or less, for the sum of $4.85. The W. 1/2 of N. E. 1/4 of S. W. 1/4, Section 16, Township 19 S., Range 28 E., 20 acres, more or less, for the sum of $9.76. The W. 1/2 of S. W. 1/4 of N. E. 1/4, Section 34, Township 19 S., Range 26 E., 20 acres, more or less, for the sum of $9.76. The N. 1/2 of N. W. 1/4 of S. W. 1/4 of Section 26, Township 20 S., Range 29 E., 5
1115 acres, more or less, for the sum of $2.39. The E. 1/2 of S. W. 1/4, Section 19, N. W. 1/4 of S. W. 1/4, Section 20, N. W. 1/4 of N. E. 1/4, Section 32, S. E. 1/4 of N. E. 1 [1/4], Section 34, Township 22 S., Range 32 E., 200 acres, more or less, for the sum of $4.85. The E. 1/2 of Lot 4, Block 10, Patrick's Addition to Orlando, for the sum of $4.85. Lots 2 and 3, Willcox Addition to Orlando, for the sum of $8.12. The S. E. 1/4 of Lot 4, Block H, Parramore's Addition to ——, for the sum of $4.01. Lots E, F, M, N, Block 6, Tavares, for the sum of $7.14. The N. E. 1/4 of N. E. 1/4, Section 34, Township 17 S., Range 29 E., 40 acres, more or less, for the sum of $3.20. The S. E. 1/4, Section 32, Township 19 S., Range 31 E., 160 acres, more or less, for the sum of $4.85. The W. 1/2 of N. E. 1/4 of N. E. 1/4, S. 1/2 of S. E. 1/4 and N. E. 1/4 of S. E. 1/4, Section 21, Township 19 S., Range 26 E., 140 acres, more or less, for the sum of $11.41. The S. W. 1/4 of Section 34, Township 20 S., Range 28 E., 160 acres, more or less, for the sum of $4.51. The N. E. 1/4 of N. W. 1/4, Section 22, Township 22 S., Range 29 E., 40 acres, more or less, for the sum of $4.51. The E. 1/2 of Lot 2, Block 22, Reids Addition to ——, for the sum of $4.85. The S. W. 1/4 of S. E. 1/4 of S. W. 1/4 of Section 19, Township 21 S., Range 30 E., 10 acres, more or less, for the sum of $4.85. The N. W. 1/4 of S. W. 1/4, Section 23, Township 20 S., Range 28 E., 40 acres, more or less, for the sum of $4.51. Lot L, Block 15, Tavares, for the sum of $4.02. The N. E. 1/4 of S. E. 1/4, Section 13, Township 20 S., Range 27 E., 40 acres, more or less, for the sum of $4.01. Lots 1 and 2, Block 12, Patricks Addition, for the sum of $11.69. The N. E. 1/4 of N. W. 1 [1/4], Section 9, Township 20 S., Range 31 E., 40 acres, more or less, for the sum of $3.20. The S. E. 1/4 of S. E.

1/4 of S. E. 1/4, Section 9, Township 20 S., Range 30 E., 10 acres, more or less, for the sum of $4.85, were sold to M. O. Crumpeller, who was the best bidder therefor for the aforesaid mentioned sums, which several sums were the whole amount of taxes due and unpaid on said several tracts of land for the year 1885 aforesaid, together with interest and cost due and the charges of such sales and has been paid by the said M. O. Crumpeller to the said J. R. Montague, collector of revenue aforesaid.

Now, therefore, know all men by these presents, that the State of Florida, in consideration of the sums of money aforesaid, and the premises, and in conformity with the law, hath and doth hereby give, grant and convey the said
1116 tracts of land above described, together with the hereditaments and appurtenances, to the said M. O. Crumpeller and to his heirs and assigns to their sole use and benefit forever.

In testimony whereof, I, T. J. Shine, clerk of the Circuit Court of Orange County, have executed this deed pursuant to and in virtue of the authority vested by law, and for and on behalf of said State and have hereunto subscribed my name officially and affixed the seal of the Circuit Court of said County of Orange at Orlando, in the said County of Orange, this 9th day of July, in the year of our Lord one thousand eight hundred and eighty-seven. T. J. SHINE,

[L. S.] Clerk of the Circuit Court.

Done in the presence of:

R. T. WAY.

J. N. BRADSHAW.

State of Florida,
Orange County.

On this day personally appeared before me T. J. Shine, clerk, to me well known as the person described in and who executed the foregoing deed, and acknowledged that he executed the foregoing deed and acknowledged that he executed the same for the purposes therein stated.

Witness my hand and seal at Orlando, this 9th day of July, 1887.

H. C. HARRISON,

[Seal] Notary Public.

Filed in the office of the clerk of the Circuit Court of Orange County, Fla., this 9th day of July, 1887, and recorded in book 58 of deeds, page 165 to 170.

T. J. SHINE, Clerk.
By C. E. BACON, Deputy.

State of Florida,
County of Orange, ss.

I, B. M. Robinson, clerk of the Circuit Court in and for the State and county aforesaid, do hereby certify
1117 that the above and foregoing is a true and correct copy of the tax deed from the State of Florida to M. O. Crumpeller, filed July 9, 1887, and recorded in Deed Book 58, page 165, &c.

Witness my hand and official seal, this 8th day of February, A. D. 1911.

B. M. ROBINSON, Clerk.
By M. A. HOWARD, D. C.
[Seal of the Circuit Court]

Indorsed: Exhibit ——, offered in evidence by defendant as Defendant's Exhibit 29, and filed this, Feb. 11, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

1118 State of Florida,
County of Orange, ss.

This indenture, made this 5th day of July, A. D. 1852, between John Simpson, sheriff and ex-officio tax collector of Orange County, and State aforesaid, of the one part, and John Starke, of the other part, witnesseth, that, whereas, the said John Simpson, being duly commissioned and qualified as sheriff and ex-officio tax collector of said County of Orange, did on the 5th day of July, 1852, levy upon and take in execution a sartin tract of land hereinafter described, supposed to belong to Theresa Rodriguez, for taxes due thereon to said State of Florida from the year eighteen hundred and forty-five and including eighteen hundred and fifty-one, and whereas, the said John Simpson after due and legal publication of the same did offer the said tract of land containing five thousand four hundred and eight acres and situated as follows, vs. [viz.], in Section 37, Township 19, Range 28, did at public outcry

for sale at the court house of said County of Orange on the fifth day of July, A. D. 1852. And whereas, the said party of the second part having offered then and there the highest bid for said tract of land the same was knocked down to him by the said party of the first part, sheriff, &c., as aforesaid.

Now this indenture witnesseth, that the said party of the first part, sheriff and ex-officio tax collector as aforesaid, for and in consideration of the sum of three hundred and forty-seven dollars and fifty cents, say ($347 50/100), to him in hand paid by the said party of the second part at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant, bargain and sell by virtue of his office aforesaid, all the right, title and interest whatsoever of the said Theresa Rodriguez or others in and to the tract of land above described with the appurtenances thereunto belonging. To have and to hold the same unto the said party of the second part, his heirs and assigns to only proper use and behoof of the said party of the second part, his heirs and assigns forever, and the said party of the first part, sheriff and ex-officio tax collector as aforesaid, for himself, his heirs, executors and administrators, doth covenant and promise to and with the said party of the second part, his heirs and assigns that he has well and truly complied with and performed all the requirements of the statute in such case made and provided, and the said party of the first part, sheriff, &c., as aforesaid, for himself, his heirs, executors and administrators, doth warrant and forever defend unto the said party of the second part, his heirs and assigns the said tract of land with the appurtenances belonging thereunto against the said Theresa Rodrigues or others.

1119

In witness whereof, I have hereunto set my hand and seal this day in the year first above written.

[L. S.] JOHN SIMPSON.
Sheriff and Tax Collector of Orange County.

Recorded in Book D, pages 277 and 278, June 27th, A. D. 1855.

ARTHUR GINN, Clk.

State of Florida,
County of Orange, ss.

I, B. M. Robinson, clerk of the Circuit Court in and for the State and county aforesaid, do hereby certify that the above and foregoing is a true and correct copy of the deed from John Simpson, as sheriff, to John Starke, filed in this office on the 27th day of June, A. D. 1855, and recorded in Deed Book "D," page 277.

Witness my hand and official seal, this the 1st
1119-B day of February, A. D. 1911.

B. M. ROBINSON, Clerk.
By M. A. HOWARD, D. C.

[Seal of the Circuit Court]

Indorsed: John Simpson, Sheriff, &c., to John Starke. Certified copy. Exhibit offered in evidence by defendant as Defendants' Exhibit 29, and filed this Feb. 11, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

Register of claims to land, exceeding three thousand five hundred acres, in East Flo

No.	Name of Present Claimants	Name of Original Claimants	Date of the Patent or Royal Title	Date of the Concession or Order of Survey	Q
1	Juan B. de Entralgo	F. M. Arredondo	.....	Mar. 20, 1817	
2	do	Antonio Huertas	.....	Sept. 15, 1817	
3	William Travers	Philip R. Yonge	.....	Feb. 22, 1817	
4	do	do	.....	Feb. 22, 1817	
5	Juan B. Entralgo	Pedro Miranda	.....	Sept. 16, 1817	
6	Antonio Huertas	Antonio Huertas	July 20, 1816	.....	
7	Juan B. Entralgo	George J. F. Clarke	Dec. 17, 1817	.....	
8	Francis J. Avice	John Huertas	Dec. 24, 1817	.....	
9	Joseph M. Arredondo	Joseph M. Arredondo	Mar. 20, 1817	.....	
10	Heirs of Chas. W. Bulow	John Russell	.....	July 30, 1812	
11	F. M. Arredondo	F. M. Arredondo	.....	Mar. 24, 1817	
12	Juan B. Entralgo	do	.....	Mar. 20, 1817	
13	F. M. Arredondo & Son	F. M. Arredondo & Son	Dec. 22, 1817	.....	4
14	Peter Mitchel	do	Dec. 22, 1817	.....	
15	Alex. M. Muir	do	do	.....	
16	N. Brush	do	do	.....	
17	Elisha Huntington	do	do	.....	
18	do	do	do	.....	
19	John Forbes	John Forbes	.....	July 28, 1814	
20	do	do	.....	do	

The above claims were acted on by the Honorable Davis Floyd and W. W. Blair

21	Heirs of Jesse Fish	Jesse Fish	.....	June 19, 1795	
22	Teresa Rodriguez	Miguel Mear	.....	Oct. 18, 1815	
23	John W. Symington	Juan P. Salas	.....	Aug. 26, 1815	
24	George Murray	do	.....	Aug. 26, 1815	
25	Archibald Clarke	John X. Arambide	.....	Dec. 4, 1813	
26	Joseph Delespine	do	.....	Dec. 4, 1813	

All of which is respectfully submitted. St. Augustine, December 31, 1825.
Indorsed: Filed in evidence in Marcus et al vs. Wilson Cypress Co., as Defendant's

REPORT No. 3.

East Florida, which are founded on patents or royal titles derived from the Spanish Government, and which, in the opinion of the Commissioners, are valid.

HE OR	Quantity of Land	By whom Conceded	Authority or Royal Order Under which the Concession was Granted	Conditions	Dates of Survey	By whom Surveyed	Where Situated	Occupation and Cultivation	
								From	To
17	Acres 4,000	Coppinger	1815	None	July 25, 1820	Andrew Burgevin	5 miles east of Spring Garden.	.....	.....
17	10,400	do	1815	.....	April 5, 1821	do	On a creek near St. John's.	.....	.....
17	8,000	do	1815	.....	.....	.....	40 miles south of Lake George.	.....	.....
17	12,000	do	1815	.....	.....	.....	.....	.....	.....
17	4,000	do	1815	.....	April 5, 1821	Andrew Burgevin	do do	.....	.....
...	10,000	do	1790	.....	.....	.....	Big Spring.	.....	.....
...	20,000	do	1815	.....	Aug. 2, 1819	Andrew Burgevin	Six Mile Creek	.....	.....
...	6,000	do	1790	.....	May 31, 1820	Andrew Burgevin	45 miles west of St. John's.	.....	.....
....	20,000	do	1815	.....	.....	do	St. John's.	.....	.....
812	4,675	Kindelan	Special	.....	June 25, 1821	G. J. F. Clarke	Big Ham'ck, Alachua	.....	.....
817	15,000	Coppinger	1815	.....	.....	.....	Timoca	.....	.....
817	4,000	do	1815	.....	June 25, 1820	Andrew Burgevin	West of Lake George	.....	.....
....	4 leagues of land to each wind.	Intendant of Cuba and Florida	1817	Complied with	.....	.....	Black Creek	.....	.....
	¼ of above	do	1817	do	.....	.....	Alachua	Nov. 1820	Dec. 28, 1824
....	30,720	do	1817	do	.....	.....	do	do	do
....	10,000	do	1817	do	.....	.....	do	do	do
....	10,000	do	1817	do	.....	.....	do	do	do
....	2,000	do	1817	do	.....	.....	do	do	do
1814	7,000	Kindelan	1790	None	Oct. 23, 1816	G. J. F. Clarke	Little nt. Mary's	.....	.....
	3,000	do	1790	None	Oct. 20, 1816	do	Cabbage Swamp	.....	.....

W. Blair, and reported in Congress on the last session of this board.

CASES REPORTED THIS SESSION

1795	10,000	Morales	1790	Complied with	.....	.....	Anastasia Island	.....	.....
1815	5,500	Estrada	1815	None	.....	.....	Long Lake	.....	.....
1815	7,000	do	1815	None	.....	.....	Key West	.....	.....
1815	7,000	do	1815	None	.....	.....	do	.....	.....
1813	80,000	Provincial deputation at Havana	1790	.....	.....	.....	New Cape Florida	.....	.....
1813	92,160	do	1790	.....	.....	.....	do	.....	Davis Floyd W. H. Allen

25.
Fandant's Exhibit No. 30, this Feby. 11, 1911. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.

1121 Washington, January 31, 1826.

The undersigned commissioners for ascertaining claims and titles to lands in East Florida report that, in the discharge of the duties assigned them, they have examined and disposed of claims herein set forth, in the manner and upon the principles exhibited in the following nine classes, numerically arranged. Number one is a class of claims, as per register transmitted herewith, to lands not exceeding 3,500 acres in quantity, and which have been confirmed by the board. This class of claims is founded on royal titles and on concessions, some of which are unconditional, and others conditional. A royal title is the highest order of title known by any law, usage or principal [principle] in the Province of East Florida. Titles of this description were designed to convey the fee simple to the grantee; they were usually made by the acting governors of the province in the name of the King; they recited the grant to be in "perpetuity," and also the specific metes and bounds of the land, although it is believed there were a few exceptions. This title may be said to correspond in character with that of a patent issued by our government. Concessions without condition are understood to differ from a royal title only in this, that most of the latter recite the metes and bounds, whereas the unconditional concession, although definite in quantity and locaton of the lands, is still subject to a survey which, when made, was followed up by maturing the concession by a royal title. In concessions with conditions it was always expected by the Spanish authorities that the grantee was to comply with them, and not until then could he obtain a royal title; yet, on proof of conditions performed, it is believed that they were never very rigorous. Orders for survey were generally predicated upon concessions previously granted, yet a few have come before the board that were not, but were made by the deputy governor (as stated in his testimony) by virtue of a verbal order of the

1122 governor. In no case, however, has the quantity exceeded 640 acres, which has been confirmed; and then not until the document proved that the grantee had been in the actual possession and cultivation of the land at and before February 22, 1819. In deciding on the cases comprehended in this class the board have, in all cases of royal titles and concessions without condition, where the documents were found amongst the archives of the country, and no allegations

on the part of the United States appearing against them, considering themselves bound to grant certificates of confirmation to the claimants; and in all cases exceeding 1,000 acres, and not exceeding 3,500, where the parties, in addition to the preceding qualifications, proved that they were in the actual possession and cultivation of the land at the time of the cession, the board have also considered themselves bound to grant certificates of confirmation, as well as in the cases of concession with condition, where the claimants, in addition to the qualifications mentioned, proved also the conditions to have been substantially performed.

Number two comprises claims not exceeding 3,500 acres, which, although found to be valid Spanish grants, yet have not been confirmed, from the want of proof of actual possession and cultivation at the time of the cession. They consist of royal titles and concessions, as in class No. 1.

Number three comprehends claims exceeding 3,500 acres, the titles to which were found amongst the public archives of the country and are ascertained by the commissioners to be valid Spanish grants, and reported accordingly to Congress for confirmation. On this class the commissioners think it necessary to remark that, although the subject has continued to engage their attention, they have perceived no principle calculated materially to alter their rules of adjudication as set forth in their first report. From the most correct information they have received, they are of opinion that the rules for granting lands were, in East Florida, different

1123 from those in the other Spanish provinces. In East Florida the governors seem to have exercised a discretion in granting lands for various purposes to all such as made application for them; but the commissioners have been much perplexed in endeavoring to ascertain the limit of their authority; hitherto their researches have been in vain. That this discretionary power was uniformly exercised by the governors is clearly to be inferred from their own acts; for the first governor after the cession of the province in 1783 made no grants of lands, or but few, and those only in small quantities. The one who succeeded him (Governor Quesada) established and published rules and regulations for the distribution of the public lands, one of which was the appointment of a commissioner, who, with the assistance of a surveyor, was specially intrusted with the distribution of the public lands. This they

did in the following proportions: to the heads of family 100 acres, and to each other member, of whatever age, sex, or color, 50 acres. Nevertheless, it is found that Governor Quesada made grants in violation of these rules. His successor (Governor White) esablished rules differing from those of Quesada, and reduced the quantity to be given to the heads and other members of a family, and added the condition of ten years' possession before the party should be entitled to a royal title; and White also is found to deviate, in some cases, from the rules established by himself, as well as those of Quesada. There is also a peculiarity in the phraseology of a royal title; in all the grants of this nature the legal right to grant the lands is asserted, from which it is clearly to be inferred that the governors considered themselves entitled to and did exercise a discretionary power to grant the public lands to those who might make application for them in such quantities as they conceived might tend most to encourage the population and improvement of the country. By examining the correspondence between the King and the intendants,
1124 it will be found that they were particularly charged, and especially in East Florida, to promote the population and improvement of the province by all the prudential means in their power. To this end the commissioners find all the governors giving grants of land for the declared purposes of agriculture, pasturage, grist and saw mills, as well as indemnity for losses, and for military services, each of which seem to be embraced in the discretionary exercise of gubernatorial power. The commissioners trace this exercise, with a few exceptions, up to the year 1814, about which period, whether from a change of policy as applicable exclusively to the province or connected with an expected transfer to the United States, a practice of distribution was introduced differing from the former in the magnitude of the grants. Some of these grants favor the belief that the gratification of individual cupidity may have had some influence in their formation, but how far they comport with the laws of Spain and are entitled to confirmation the commissioners submit to the superior knowledge of Congress. There is one rule which the commissioners suppose it would not be unreasonable to apply in the adjustment of these claims. In cases where an application shall have been made for a grant of land as a remuneration for services, or other object embraced in the policy of

the government, and the grant shall have been made accordingly, if the same individual shall have made a second application for remuneration for the same services it would be no more than just to suppose that the first concession was full and ample, unless otherwise recited in the grant itself, and that the subsequent grant was an assumption of power not warranted by the laws and usages nor the policy of the government.

Number four comprehends claims under the donation act of May, 1824, and not exceeding 640 acres, and which have been confirmed by the board upon satisfactory proof that the claimant was twenty-one years of age, the head of a family, and that he had never received any written evidence of title from either the British or Spanish governments of East Florida; and furthermore, that he was actually settled on and cultivating the land at and previous to February 22, 1819, according to the requirements of the said act.

1125

Number five comprises a class of claims reported to Congress on the ground that the settlements were made between February 27, 1819, and July 17, 1821, the time of the change of government, and originating under the aforesaid donation act.

Number six comprehends claims derived from the Spanish government by written evidence, and which have been ascertained to be valid Spanish grants, and have been reported to Congress on the ground that they were undefined in quantity.

Number seven comprises claims not exceeding 3,500 acres, founded on British grants, which have been recognized by the Spanish authorities, and confirmed by the board upon proof of such recognition; and in cases over 1,000 acres, on proof of actual occupation and cultivation.

Number eight is a register of town lots and out-lots, founded on actual occupation and cultivation previous to February 22, 1819, and which have been confirmed upon proof that they were actually in possession at and previous to the aforesaid day, by and with the consent of the government.

Number nine is a class of claims differing from all the others in an apparent want of formality. The other claims were authenticated by documentary evidence filed in the office, and were entitled to all the legal presumption in their favor which applies to records in our government; but the claims of this

class were found in the possession of the claimants, and without any trace of evidence in the archives; and this circumstance, coupled with the equivocal character of the officer who verifies them, casts a shade of suspicion over the whole. In the investigation of these claims the commissioners have required the parties to show reasons why they were not
1126 on file in the archives, as well as to prove the execution; but from the interested character of the witnesses produced, the evidence on these points has been hitherto inconclusive. Thinking it probable, however, that some if not many of these claims are good and valid, and being informed by the parties of their ability to remove the suspicion, the commissioners have thought it due to justice that their opinion be suspended, and that a reasonable time should be afforded for the production of testimony.

With the outline afforded by the preceding classification, the commissioners transmit the documentary evidence, and their opinions thereon in each case, in detail. This arrangement of their opinion was suggested by the act by which the board was created, which dictated a minute transcript and investigation of the records, and a periodical accountability to the Secretary of the Treasury; and it was further enforced by the necessity of adjudicating on principles between which no summary can afford an absolute or definitive line of demarcation; and if the documents transmitted should be considered voluminous, it will at the same time be perceived that the features of the claims are various, and that the commissioners, in their operations, have been guided by the injunctions of the law. These operations have been retarded by the labor which was unavoidable in translating and transcribing the original grants and mesne conveyances, and the inadequate assistance afforded by the employment of three clerks, for which number only the law provides.

The operations of the board, independently of those contained in the first report, have resulted in the confirmation of 326 claims, in the rejection of 61, and in a reference to Congress of 88. Besides these claims, there are 528 undetermined, of which 233 are held under advisement for further proof, and 295, although filed, have not been matured to translation; and the commissioners, being sensible that the public interest demands acceleration of the adjustment of
1127 these claims, have to suggest, as a means of pro-

moting this object, that the work of transcribing and translating be performed for a pro rata compensation.

All which is respectfully submitted.

DAVIS FLOYD.
W. H. ALLEN.

Hon. Richard Rush,
Secretary of the Treasury.

My friend and colleague, Mr. Floyd, having addressed the above letter to you previous to my arrival at Washington, and approving highly of its remarks in general on the different abstracts, I have signed the letter, without requiring any alteration; but, of course, I should not be considered as participating in such remarks on abstract No. 3 as are only applicable to the cases acted on by him and Mr. Blair previous to my being a member of the board.

Yours respectfully,
W. H. ALLEN.

Hon. Richard Rush, Secretary of the Treasury.

Indorsed: Filed in evidence in Marcos et al. vs. Wilson Cypress Co. as Defendant's Exhibit No. 31, this Feby. 11, 1911. C. B. Robinson. Filed June 3, 1911. E. O. Locke, Clerk.

1128 Number of certificate, 100; owner, Powell, Geo. C.; description of land, S. W. 1/4 of S. E. 1/4; section, 34; township, 20; range, 31; acres, 40; expense of sale, 116; amount of sale, 331; name of purchaser, State of Fla.; remarks, ——.

Number of certificate, 101; owner, Powell, Geo. W.; description of land, E. 1/2 (less 40 a sold Smith & Clifford); section, 9; township, 19; range, 28; acres, 260; expense of sale, 155; amount of sale, 1222; name of purchaser, State of Fla.; remarks, ——

State of Florida,
County of Orange, ss.

I, B. M. Robinson, clerk of the Circuit Court in and for the State and county aforesaid, do hereby certify that the

above and foregoing is a true and correct copy of the items in the 1879 tax sale book for the taxes of 1878 covering certificates 100 and 101.

Witness my hand and official seal, this 8th day of Feb., 1911.

B. M. ROBINSON, Clerk.
By M. A. HOWARD, D. C.

[Seal of the Circuit Court]

Indorsed: Exhibit 32, offered in evidence by defendant as Defendants Exhibit ——, and filed this Feb. 17, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

1129

Copy of Field Notes
of
The Survey of Section Twenty-one, Township Nineteen South, Range Twenty-eight East. Surveyed by R. W. Norris in 1848. Var. Not Given.

80.13 North on East Bdy. From S. E. Cor. From which. In running S. Bdy. of Sec. 22 West. at. Intersect meridian in edge of scrub and 23 Lks. North of temporary post—make corner. This stake and corner identified as below. Live pine N. 75° E. 45 at 28 1/2 feet. Stump pine S. 41° E. 80 at 63 1/3 feet. Stump pine S. 48° W. 48 at 31 feet. Stump pine N. 79° W. 115 at 69 feet old grant stake figures 2 7 on S. E. side.

5.00 (West Bdy. of Sec. 22 North.) Enter scrub (across a grass pond).

25.00 To pine woods.

39.93 Set 1/4 S. post. Pine S. 33° E. 40. Pine S. 71° E. 75.

69.00 To sulphur Spring.

79.86 To N. W. Cor. of on edge of hammock. Low slightly rolling and 3rd rate scrub and pine woods. Timber small.

80.36 West on N. Bdy. From N. E. Cor. From which In running S. Bdy. of Sec. 15. West at Intersect meridian 14 Lks. South of temporary post and es-

tablish corner. Pine S. 80° E. 82. Pine S. 65° W. 75. Cabbage N. 73° E. 100 at 60 feet. Pine N. 37° W. 65 at 36 feet a stump.

39.98 S. Bdy. of Section. 16 West. Set 1/4 Sec. post. Pine S. 76° W. 35. Pine N. 40° E. 32.

1130 79.96 Intersect meridian 23 Lks. North of temporary post and make corner. Pine N. 57° E. 35 at 29 feet. Pine S. 13° W. 45 at 31 1/2 feet. Pine S. 22° E. 30 at 21 feet. Pine N. 38° W. 60 at 48 feet. Low slightly rolling 3rd rate pine and [illegible]e black jack. Timber thin and small.

11.00 South Boundary of Sec. 21. West. To pond, extending 10 Chs. North.

15.00 X do.

39.93 Set 1/4 Sec. post. Pine N. 23° E. 92. Pine S. 45° E. 10.

79.87 Intersect meridian 14 Lks. North of temporary post—establish corner. Pine N. 43° E. 40. Pine N. 31° W. 26. Pine S. 42° E. 45. Pine S. 22° W. 20. 1st 10 Chs., pine & saw palmetto. Remainder of pine woods. Timber thick but of ordinary size.

3.50 West Boundary of Sec. 21. North. To lake.

40.11 Set 1/4 S. post on point of land, running in from from the West. Pine N. 79° W. 40. Pine N. 69° E. 4.20. This last bearing is taken across narrow neck of lake.

45.00 Re-enter lake.

61.00 To open pine woods.

80.23 To N. W. corner of section. Lake & 3rd rate open pine woods. Low slightly rolling & timber thin and of ordinary size.

(The following survey of the South boundary line of claim of Theresa Rodirguez [Rodriguez] on Big Spring, executed by M. A. Williams in 1851. Var. 4° East.)

3.80 2nd Line East. South Line. N. W. line Sec. 21—74.55 N. of S. W. Cor. Pine S. 69° W. 30. Can't identify Pine S. 31° E. 20; can't identify corner.

51.00 To grass pond. 51.90 Chs. to high water mark.

57.00 X do.

83.80 X West line Section 22 in edge of branch of

1131 White Sulphur Spring—74.60 N. of S. W. Cor.

Indorsed: Filed in evidence, this 13th day of March, 1911, as defendant's Exhibit 33. C. B. Robinson, Special Master. Raleigh C. Dowling (Notary Public). Filed June 3, 1911. E. O. Locke, Clerk.

1132 The United States of America.

To all to Whom These Presents Shall Come—Greeting:

Whereas, it appears that the claim of Teresa Rodriguez for a tract of land in the State of Florida was reported as claims number twenty-two in report number three of the Board of Commissioners for the adjustment of private land claims in East Florida, dated St. Augustine, December thirty-first, eighteen hundred and thirty-five; and whereas, it appears that the aforesaid claim was confirmed, not to exceed a league square, by the act of Congress, approved on the twenty-third day of May, eighteen hundred and twenty-eight, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida"; and whereas, the aforesaid claim has been regularly surveyed and designated as Section Thirty-seven, in Township Nineteen South, of Range Twenty-eight, and Section Forty-one, in Township Nineteen South, of Range Twenty-nine East, of the principal meridian, Florida, containing in the aggregate five thousand four hundred and eighty-six acres and forty-six hundredths of an acre, as appears by a plat and description thereof on file in the General Land Office of the United States, duly authenticated and approved on June 18th, 1894, by the signature of W. H. Milton, Jr., surveyor general for the State of Florida; which said plat and descriptive notes are herein inserted and made a part of these presents and are in the words and figures following, to-wit:

"The above plat represents the survey of a tract of land made in favor of Teresa Rodriguez in her claim to 5500 acres entered as claim No. 22 in Report No. 3 (see State papers, Vol. 4, page 283), and was recommended to Congress for confirmation on the 16th day of December, 1825, by the Board of Commissioners for the District of East Florida, appointed in pursuance of the act of Congress of the 3rd of March, 1823,

entitled "An act amending and supplementary to the act for ascertaining claims and titled [titles] to land in (within) the Territory of Florida," and to provide for the survey and disposal of the public lands in Florida (see Statutes at Large, Vol. 3, pages 709 and 754); and was confirmed by the act of

1133 Congress of the 8th of February, 1827, entitled "An act to provide for the confirmation and settlement of private land claims in East Florida, and for other purposes (see Statutes at Large, Vol. 4, pages 202).

The following being the description of the survey taken from the approved field notes of the survey thereof as executed by M. A. Williams, a deputy surveyor, in the month of January, 1851, under his contract with Benjamin A. Putnam, surveyor general of Florida, of the 19th of October, 1850:

Survey executed at a variation of 40 east. (For field notes see 181, page 434.)

Beginning at the N. W. corner of the claim at a pine marked X R; thence south on the west line of their survey 250 chains X north line of Sec. 8, 76.80 chains east of its N. W. corner; from said point a pine bears N. 60 degrees W. 20 links, and a pine bears S. 10 degrees W. 15 links distant 82.60 chains X north line of Section 17, 76.50 chains east from its N. W. corner; from said point a pine bears N. 20 degrees E. 40 links distant, 97.00 chains X branch, course west, 162.65 chains, X north line of Section 20, 76.70 chains east from it; N. W. corner (note, no description of a corner at this point in the field notes); 168.00 chains the S. W. corner of this survey; from said corner a pine marked X R bears N. 60 degrees E. 60 links distant; thence east, on second and south line of this survey, 3.80 chains X west line of Section 21 74.55 chains north of its S. W. corner; from this point a pine bears S. 69 degrees W. 30 links, and a pine bears S. 31 degrees E. 20 links distant 51 chains to grass pond, 57.00 chains X grass pond, 83.50 chains X. (Checked OK with F. Notes filed in evidence 24th Aug., 1909, as Defendant's Exhibit No. 27. C. B. Robinson, Spc. Master.)

West line Section 22 (in edge of a branch of White

1134 Sulphur Springs) 74.60 chains north of its S. W. corner (note, no corner at this point described in field notes), 85.00 chains X branch or creek 98.00 chains to hammock 163.65 chains X west line of Section 23, 74.65 chains

north of its S. W. corner; from said point as [an] iron tree bears S. 89 degrees W. 15 links, and an iron tree bears S. 30 degrees E. 25 links distant 166.00 chains X a branch, course north; 217.00 chains to swamp, 243. 58 chains X west line of Section 24, 74.70 chains north of its S. W. corner. From said point as [an] ash bears S. 7 degrees W. 77 links, and a maple bears S. 30 degrees E. 20 links distant 270.00 chains to hammock 301 chains X hammock, 304.00 chains to bay gall, 306.50 chains X bay gall 315.00 chains to hammock, 323.40 chains X east line Section 24 (range line) 74.80 chains north from its S. E. corner; from said point a cabbage bears S. 15 degrees W. 30 links and a cabbage bears S. 28 degrees E. 12 links distant, 327.00 chains (in Range 29 East) the S. E. corner of this survey (note, no description of corner in field notes); thence north on the east line of this survey 5.80 chains X north line of Section 19, 76.45 chains west from its N. E. corner; from said point a myrtle bears north 30 degrees E. 15 links and a myrtle bears S. 26 degrees 20 links distant, 13.00 chains to a deep creek, 14.00 chains X creek, 23.00 chains to scrub, 30.00 chains to swamp, 35.00 chains to hammock, 55.00 chains to X hammock, 60.00 chains to pipe and cabbage, 65.00 chains X, pipe and cabbage, 78.00 chains to pipe and cabbage, 86.00 chains X north line Section 18, 67.30 chains west from the line of Pedro Miranda's grant; from said point a pine bears N. 62 degrees E. 50 links, and a pine bears S. 61 degrees E. 45 links distant, 104.00 chains to hammock 125.00 chains X hammock, 166.06 chains X north line of Section 7, 76.35 chains west from its N. E. corner; from said point a cabbage bears S. 30 degrees E. 50 links and a cabbage bears N. 22 degrees E 30 links distant, 168.00 chains, the N. E. corner of this survey; from said corner a pine bears N. 50 degrees W. 26 links marked X R; thence west on north line of
1135 this survey 3.50 chains X west line of Section 6 (Range line) 78.00 chains south of its N. W. corner; from said point a pine bears N. 25 degrees E. 60 links, and a pine bears N. 40 degrees W. 70 links distant 15.00 chains (in range line 28 east) to swamp 23.00 chains, X to hammock 40.00 chains to pine and cabbage, 63.60 chains to burnt bay 83.65 chains X west line of Section 1, T. 19, R. 28—77.89 chains south of its N. W. corner (note, no corner described at this point) 97.00 chains to hammock, 125.00 chains to creek, 125.60 chains X creek, 163.81 chains X west line of Section 2.

77.65 chains south from its N. W. corner; from said point a water oak bears N. 28 degrees W. 14 links, and a live oak bears N. 60 degrees E. 17 links distant 167.00 chains X hammock, 243.70 chains X west line of Sections 3, 77.60 chains south of its N. W. corner (note, no description of corners at this point in field notes) (last 80.00 chains scrubby). 323.10 chains X west line of Section 4, 77.85 chains south of its N. W. corner; from said point a pine bears N. pine N. 18° W. 15 43 degrees E. 10 links distant, 326.15 chains to N. W. corner of this survey and place of beginning, being Section 37, Township 19 South, of Range 28 East, and Section 41, Township 19 South, of Range 29 East, of the principal meridian, Florida, containing 5486.46 acres.

U. S. Surveyor General's Office,
Tallahassee, Florida, June 18th, 1894.

Examined and approved.

W. H. MILTON, JR.,
Surveyor General.

Now, know ye, that the United States of America, in consideration of the premises and pursuant to the provisions of section twenty-four hundred and forty-seven of the Revised Statutes of the United States, has given and granted, and by these presents does give and grant, unto the said Teresa Rodriguez, her heirs and assigns and legal representatives, the tract of land embraced and described in the foregoing survey; but, with the stipulation that, in virtue of the provisions of the aforesaid section of the Revised Statutes of the United States, his patent "shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same
1136 land, nor be considered to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the said lands."

To have and to hold the said tract of land with the appurtenances unto the said Teresa Rodriguez, her heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be herewith affixed.

Given unto my hand at the City of Washington, this 26th day of June, in the year of our Lord 1895, and of the Independence of the United States the one hundred and nineteenth.

By the President, GROVER CLEVELAND.
By M. McKEAN, Secretary.

L. Q. C. LAMAR,
Recorder of the General Land Office.

Recorded Vol. 18, pages 390, to 395 inclusive.

Filed for record January 7th, 1896, and recorded same day in Book 29, pp. 452 to 458 inclusive, records of Lake County, Florida, and I certify that the foregoing is a full and true copy of the original patent.

CLERK,
D. C.

Indorsed: Filed in evidence, this 13th day of March, 1911, as Defendant's Exhibit 34. C. B. Robinson, Special Master. Raliegh C. Dowling, Notary Public. Filed June 3, 1911. E. O. Locke, Clerk.

1137 State of Florida,
County of Orange.

This day personally appeared before me Frederic H. Rand, who being first duly sworn by me, deposes and says that he is the Frederic Rand who as attorney in fact for Edwin Sandis Dawes and George Augustus Thomson, the trustees of the Florida Land and Colonization Company, a corporation, conveyed for said trustees to Florida Land and Colonization Company, Limited, of England, a corporation under and by virtue of the Companies Acts of 1862 to 1898, that certain tract of land known as the Rodriguez Grant, lying in Lake County, State of Florida, by deed dated the 2nd day of December, 1899, and recorded in records of Lake County in Deed Book 35, pages 541-542, as therein stated in said deed.

Deponent further says that at the time that he made and executed said deed that Anthony Norris was dead, and deponent had had notice at that time of the death of said An-

thony Norris, and, therefore, made and executed said deed in the name of the said two surviving trustees, Edwin Sandis Dawes and George A. Thomson, trustees of the Florida Land & Colonization Company, as their attorney in fact mentioned in said deed, and did not make and execute said deed in the name of said Anthony Norris, or for said Anthony Norris, who was then dead.

FREDERIC H. RAND.

Sworn to and subscribed before me, this 13th day of March, 1911.

B. F. WHITNER, JR.,
[Notarial Seal] Notary Public, State of Florida at Large.

My commission expires Feby. 9th, 1913.

Indorsed: In United States Circuit Court, Southern District of Florida. In Chancery. Enrigue del Pozo y Marcos et al. vs. Wilson Cypress Company. Affidavit of F. H. Rand. Filed in evidence by the defendant as Exhibit 35, this 14th day of March, 1911. C. B. Robinson, Special Master. Raleigh C. Dowling, Notary Public. Filed June 3, 1911. E. O. Locke, Clerk.

1138 Sorrento, Fla., Mar. 29th, 1911.

Messrs. Cooper & Cooper,
Jax., Fla.

Gentlemen: Below please find checking of pine trees counted along new line established by Messrs. Ginn & Braston across N. end of Sec. 21, beginning on W. Grt. line of Red. 5.35 chs. S. of point where Grt. line crosses N. line of Sec. 20, T. 19 R., 28 E.

At Chs.	Pine.	Dia.	Distance from line.
.45	"	16 in.	8 " " "
2.91	"	18 "	4 " " "
3.68	"	17 "	5 " " "
5.70	"	14 "	8 " " "
6.62	"	12 "	5 " " "
6.66	"	13 "	3 " " "
6.72	"	15 "	2 " " "
6.86	"	17 "	2 " " "

8.18	"	13	"	4	"	"	"
9.80	"	18	"	4	"	"	"
10.83	"	20	"	4	"	"	"
11.70	"	13	"	3	"	"	"
13.77	"	13	"	2	"	"	"
15.48	"	15	"	1	"	"	"
16.14	"	16	"	2	"	"	"
16.22	"	14	"	8	"	"	"
17.15	"	15	"	8	"	"	"
18.48	"	16	"	2	"	"	"
18.98	"	13	"	4	"	"	"
19.06	"	12	"	6	"	"	"
19.30	"	14	"	1 1/2	"	"	"
19.82	"	17	"	4	"	"	"
20.00	"	14	"	1	"	"	"
20.58	"	17	"	3	"	"	"
22.03	"	20	"	8	"	"	"
22.60	"	16	"	6	"	"	"
23.96	"	13	"	2			
25.72	"	16	"	1			
26.56	"	18	"	3			
27.10	"	15	"	9			
27.78	"	19	"	4			
27.88	"	13	"	4			
30.36	"	18	"	0			
30.94	"	20	"	0			

Yours truly,
L. J. OWENS.

Indorsed: Filed in evidence, marked Defendant's Ex. #36, Apr. 14th, 1911. Mabel Johnson, Special Examiner and Notary Public. My commission expires Feb. 17, 1915. Refiled in evidence, this Apr. 17, 1911. C. B. Robinson, Spl. Master. Filed June 1, 1911. E. O. Locke, Clerk.

1140. Fray Mariano Osmalde Religioso Franusceana Cura Paroca de la Yglesia Parroqueal de Ascenso de esta Villa de Guanabacoa provincea y Diocesia de la Habana.

Certificio: que en el libro 15 de entierros de españoles, al folio 37 vuelto y marcado con el numero 220, schalla la partida del tenor siquiente:

"En la Yglesia Parroquial de NFra. Tra, dé la Asuncion de esta Villa de Guanabacoa en veinte de Junio de mil ochocientos cincuenta anos, se entern en el Cementerio general de decha Yglesia su una de las bovedas de Hospital de Mugeres á Da Maria de Jesus Rodriguez natural y vecina, de la Habana y residente en esta Villa, hija legitima de D. Lorenzo, y de Da Ysabel Casilda Piuma, vinda die Subtimente de Artilleria D. Miguel Marcos, en primeros, y en segundas de D. Julian Salas; no testo ni recebio Sacremento alguno, seignora, su edad, y la firme:—Br. Jose MaCaslaneda—hay una rubrica":

Es conforme a su original—Guanabacoa diez y unevá de April de mil novecuentos diez anos:

FR. MARIANO OSANALDE.

(Seal or stamp affixed bearing the words "Parroeia de Ascenso de Xira Sra de la Asencion de Guanaboa.")

Indorsed: "Complainant's Exhibit No. 1, hearing May 5, 1910, for identification. Signed by initials of respective coun- W. W. D., E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1143 Fray Mariano Osinalde, of the Franciscan Order, curate of the Church of Ansenso, of this Town of Guanabacoa, Province and Diocese of Habana.

Certify, that in book 15, of the burials of Spaniard, folio 37, over and marked number 220, is found the following record:

In the Parochial Church of Our Lady of Asuncion, of the Town of Guanabacoa, on the 20th of June, of 1850, there was buried in the General Cemetery of said church, in one of the niches of the department for women, Dona Maria de Jesus Rodriguez, native and resident of Habana, and resident also of this city; legitimate daughter of Don Lorenzo and Dona Isabel Casilda Piuma, widow of Lt. of Artillery Miguel Marcos, in first nuptials—in second, of Don Julian Salas. She did not testate—nor receive any saeraments—her age unknown, and I signed it.

Br/ JOSE MARIA CASTANEDA.

There is a rubric/

It agrees with the original—Guanabacoa, April 19th, 1910.

FRAY MARIANO OSINALDE.

1142 N.O.406.370

A—

(Here is stamped in green ink a design on which are the words "Sello 118 A s 1886 y 87 Colon Europa 55 C. Peso".)

(Also in lead pencil writing is found at the head of the document the following: "Marriage of Miguel Marcos and Josefa M. C. Diaz. Miguel is son of Miguel Marcos & Luisa Rodriquez".)

Poto. Dn. Andres Martinez Etor Cura Parroco dela Yglesia de Yngreso de San Augustin de Celba Mocha Provincia Diocesis de la Habana—Certifico que en el libro 2 de Matrimonios de blancos al fo. 171° G. S. se halla lapatida siguiente—

"Enveinte y ocjo de Diciembre de mil ochocientos treinta Yo Dn. Carlos Jose Alfonzo Bdo. Feinente de Cura por S M. dela Ygelesia Auxiliar de San Augustin de Ceiba Mocha; habiendo hecibido un auto oliencia del tribunal toco confecha cuatro del corriente y en su virtud practicadas las demas deligiencias estra judicialle q. enel se previencu y leidas las tres amonestacion donde correspondia sin resultar impedimento alguno Despore in facia ecclesia á D. Miguel Marcos ya Da. Josefa Ma. Cleofas Diaz solteros chi joc septimos el primero de otro Dn Miguel Marcos y de Da. Teresa Rodriguez natural de S. Sugustin de la Florida, vecino que fué de Guines y á hora de esta feligresia y la Dn. Bartolome Diaz y de Da. Blasa Ma. Fernandez de esta naturalidad y vicindad el tiempo ucceresario alos cualls habiendo preguntado tube por vespuesta su mutuo concentimento les previne que parecierau á velarce en tiempo habil vajo tas penas canonicas de acto fueson Testigos Dn. Juan Jose Naranjo y Dn. Manuel de Soso y lo firme—Carlos Jose Alfonzo.

Es conforma á su orijinal Ceiba Mocha—Noviembre viente de mil ochocientos ochenta y seis—Andres Martinez Etor.

(Here is stamped the following: "Yglesia Parroquial de Ingresso Ceiba Mocha".)

1143 Los Notarios publicos del Cologio del Territorio dela Evma. Audiencia dela Habana Can residencia en estat Cindad lega lizamos la firma y rubrica del Pbro. D.

Andres Martinez Etor Cura Parroca dela Yglesia de la Augustin de Ceiba Mocha provincia de la Matanzas Diocesis dela Habana, quien se encuenentra en el egercicio de sue funcione y dandosel entera fé y credito, en juicis y fusra de el á sue firma y rubrica, iguales á las anteriore y sin quq Oenada nos conste en Contrario. Yspara asi justificarle espredimos la presente con el sello da nuestro Colegio, encellatanza y á dos de Diciembre de mil ocho Cientos ochentay seis—Enmendado Matanzas—vale—"—

BONIFACIO DOMINGUIZ.
MANUEL ZAMBRARIO.

(On the lower left hand corner is affixed a printed seal bearing the words: "Colegio Notarial del Territorio de la Aud. de la. Habana. Nihil Prius fide 979 7 pesetas 50 centimos Dia Q. Diciembre 1886." Also a stamp on which is printed the words "Cuba. 5—C. de peso.")

Indorsed on back: "Complainant's Exhibit No. 2, hearing of May 5, 1910." "Signed for identification by the initials of respective counsel, W. W. D., E. E. H."
"Filed June 8, 1911. E. O. Locke, Clerk."

1144

Presbyter Don Andres Martinez, acting parish priest of the Church of Ingresso of San Augustin of Ceiba Mocha, Providence [Province] of Matanzas, Diocese of Habana, certify that on Book 2 of marriages of whites, on folio 17, G. S. is found the following record:

On the 28th of December, 1830, I, Don Carlos Jose Alonzo, assistant to the priest of His Majesty of the Church of San Augustin of Ceiba Mocha, having received a license from the Ecclesiastic Tribunal, dated fourth of the present month and under its laws, performed all other extra-judicial duties which are required, and having read out the three banns of marriage, in their proper place and time, no impediment resulting therefrom, I united under the oath of the Holy Church, Miguel Marcos and Josefa Maria Cleofas Diaz—both single, and legitimate, the first of the other Miguel Marcos and Teresa Rodriguez, native of San Augustin, Florida, who was a resident of Guines and now of this diocese—and the second of Don Bartolome Diaz and Blasa Maria Fernandez, native and resident

of this place—to both of whom, at the proper time I had asked and received for answer their mutual consent, I notified them to appear and keep the vigil under canonical penalty, to which act were witnesses Juan Jose Narajo and Manuel de Sosa—and to this I place my signature.

CARLOS JOSE ALONZO/

1145

At the top of this exhibit is found written with lead pencil the following, viz: "Burial of Miguel Marcos, son of Mihuel Marcos & Luisa Rodriguez & husband of Josefa Diaz, who died the day before." Also is found the following, viz: A stamp containng the words: "Espendeuria de Effegtos Timbrados de Jaruco."

Also a stamp in green containing the words: "Sello 11° A. D. 1886 y 87. colon 35 G. De Peso." Also in black ink print in upper right hand corner the following: "N. O. 336.228," and in the upper left hand corner the letter "C", written with pen and ink. Then follows:

Ptro. D. Manuel Cuervo y Lopez, Cura interino de la Yglesia parroquial de asenso de San Juan Bautista de la Cindad de Jaruco: Certifico, que esse el libro Co. de entierros de blancos al fo. 9° No. 24, se halla la partida, que á la letra due essé.

"El dia matro de Marzo de mil ochosientos setenta y siete, se le diô sepulturs en el cementerio general de esta paroquia de San Juan de Jarusio, al Cadaver de D. Miguel Marcos, natural de la Florida y vecino de esta Cindad, hijo legitimo de D. Mihuel de D'a Teresa Rodriguez; del setenta y seis años de edad; de estado visido de D'a Josefa Diaz, que habia Falleirdo el dia anterior; no verbio los tantos sacramentos por no Baberlos solintado. I para que conste lo firma.

MANUEL CUERVOS LOPEZ.

(To this is appended a stamp containing the following, viz: Iglesia parroquial de ascenso, de Jaruco.)

Then follows:

"El infrascrito Notorio del Colegio de la Habaña con Ociedencia en esta Cindad:

Da fe: que D. Manuel Cuerro Lopez, cura parrico esta feligresia por quien resulta enpedid el anterior certificad, se la

Mala en efercices du indicad cargo ala fecha del mismo documento y que la firma puestas al pié de esse san ignales
1146 á los que usa. y, al par cer. de su propis Firmo, sin que me conste nana en contrario Dad el presente con el sello de mestro Colegio a Jaruco á primero de Diciembre de mil eschocientro ochenta y seis.

JACINTO VILLAGENTIX.

V'to B'no
El Yuez de primero inst.
J. M. de la Torre/

(In the lower left hand corner is affixed a stamp containing words as follows, viz: "Dia 1° de Deciembre 1886. Colegio Notarial del Territorio de la Aud á de la Habana. 7 pesetas 50 centimos. Nihil Prius fide No. 980." And another a small stamp affixed bearing the following words, viz: Cuba. 5-C. de peso.)

Indorsed: "Complainant's Exhibit No. 3, hearing May 5, 1910. Signed for identification by initials of counsel. W. W. D. E. E. H."

"Filed June 8, 1911. E. O. Locke, Clerk."

1147 Presbyter Don Manuel Guero Lopez, Provisional Priest of the Parish Church of the Asenso of San Juan Batista of the City of Jaruco, Certify: That in Book 6, of burials of whites, folio 9, number 24, is found the following record worded to the letter:

On the fourth day of March, 1867, burial was given in the public cemetery of this Parish of San Juan de Jaruco to the corpse of Don Miguel Marcos, native of Florida, resident of this city, legitimate son of Don Miguel and Donna Tereas Rodriguez, seventy-seven years of age, widower of Dona Josefa Diaz, who died the day before/ He did not receive the last sacraments as he did not ask for them, and to verify the same I place my signature.

MANUEL GUERVO LOPEZ/

It agrees with the original—Jaruco, Nov/ 25th, 1885/
MANUEL CUERVO LOPEZ/

The undersigned notary of the College of Habana, resident

of this city, certify: That Don Manuel Cuervo Lopez, parish priest of this parish, who expedited the abóve certificate, was performing the duties entrusted to him on the date of this document and the signature placed at the bottom is the one he is in the habit of using, appearing to be his own handwriting, and as I can certify to nothing further to the contrary I sign with the seal of our college—Jaruco Dec/ 1st, 1886/

JACINTO VILLAGENTIX/

Judge of First Prosecution

J. M. de la Torre/

1148 S. N. O. 705.067

(In lead pencil:) Baptism of Felix Genaro, son of Miguel Marcos and Josefa Diaz.

(A stamp is affixed to the head of this document, bearing the words "Sello 11° As. 1886 y 87 plus ultra colon 53 C. de peso".)

(And another stamp is affixed bearing the words "efectos timbrados Jaruco.")

(Then comes the document proper, viz:)

"Don Joaquin Gonzalez Mr ayo Ptro. Cura Parroco interino de la Yg'a de Ntra' L'a Sr'a del Carmen y San Lorenzo del pueblo del Aguacate Provincia Diocos la Habana Certifico que en el libro Cuarto de batismos de blancos espanole, a folios 77, vuelto numero 94 a halla la siguiente—Partidas—

Viernes veinte y Cuatro de Marso de mil echo cintos setenta y unanos; yo D. Justo Alentado Pbro' Cura B'do por el M de la Yg'a Parroq'l in de Ntr'a L'a del Carmen y S. Lorenzo del Aguacate, ne recibido un decreto del Titu'o tor Gobernador del Obispado en auteresia del Exent's Titu'o tor Obispo Diocesano, en el Cual el me autorisa para que con la clausula imperjuicio de tercer° óraciente en este libro la partida bautismal de D. Felix Genaro, que nacio en el ano de mil ochocientos cuarenta y bautizado en el mismo ano por el Cura Parroco que era entonces de esta Yglesia Pbr'o D. Lorenzo Franquina como hijo legitimo de D. Miguel Marcos, natural de el Agustin de las Floridas y de D'a Josefa Maria Cleofas Diaz, quqe lo es de Ceiba Mocha; ciendo cue abuela paternos Don Miguel y

D'a Teresa Rodriguez, Maternos D. Bartolome y D'a Blasa Miria Fernandez y padrinos D. Felix Diaz D'a Agustina Fernandez, y en virtud del expresado decreto, en frecha diez y seis del presente mes y ano Firmo la presiente.

JUSTO ALENTADO.

Es enteramente como en original Aguatate veinte y siete de Noviembre de mil ochocientos ochenta y seis.

JOAQUIN GONZALEZ.

(Here is impressed a stamp in violet ink, bearing the words: "Yglesia parroquil de ntra bra del Carmen del Aguacate".)

El Notario que subscriba, del Colegio del Habana. Da fe' que D. Yoaquin Gonzalez Merayo, cura parrico del
1149 Aguacate, en este partid judicial por quien resulta suscrito el anterior certifica de la fecha del mismo documento, y que la firma y rubrica puestas al pie del mismo san ignales alos que usa, y al parecer, de an proprio que me cuesta nada en contrario. Da de el presente con el sello de nuestro Coligio en Jaruco a lrimero de Seciembre de mil ochocientos ochenta y seis.

JACINTO VILLAGETIX.

V'to B'no
El Juez de primera inst'a
J. M. de la Torre.

(To the foregoing is attached a stamp or seal bearing the words: "Colegio Notarial del Territorio de la Aud' de la Habana. Nihil Prius Pide Proto Colo. Dia 1° de Dtre de 1886 7 pesetas 50 centimos", and also a smaller stamp bearing the words: "Cuba D tre 1° 1886 5-C. de Peso".)

Indorsed: "Complainant's Exhibit No. 4, hearing May 5, 1910. Signed for identification by counsel by their initials. W. W. D. E. E. H."

1150 Don Joaquin Gonzalez, Merago Provisional Parish Priest of the Church of Our Lady of Carmen and San Lorenzo, of the Town of Aguacate, Province of and Diocese of Habana, certify that in the fourth book of baptisms of Spanish whites, folio 77, over number 94, is found the following record:

Friday, the 24th of March, of 1871, I, Don Justo Alentado, Presbyter Priest for His Majesty, of the Parish Church of Our Lady of Carmen and San Lorenzo, of Aguacate, have received a degree from his Ex/ the Governor of the Bishopric in the absence of His Most Ex/ Bishop Diocesan, in which His Ex/ authorizes me, with the right of the imperial third person, to extract from this book the baptismal record of Filix Genaro, who was born in the year 1840 and baptized the same year by the Parish Priest, who was then Presbyter Lorenzo Franquina, as legitimate son of Miguel Marcos, and Josefa Maria Cleofas Diaz, of Ceiba Mocha/ paternal grandparents Don Miguel and Dona Teresa Rodriquez—maternal grandparents, Don Bartolomeé and Doña Blasa Agustina Fernandez, in accordance with this decree dated 16th of the present year I place my signature.

JUSTO ALENTADO/

It is entirely in accord with the original. Aguacate, 27th of November, 1886.

JOAQUIN GONZALES.

The notary who subscribes to this is of the College of Habana and certifies that Joaquin Gonzalez Merayo, parish priest of Aguacate, gives judicial record of this in the absence of the parish priest who left him in charge of these documents, and that his signature and rubric placed at the bottom are the very same that he uses, and from appearance his own handwriting, not being able to testify to the contrary I sign this and place the college seal in Jarnco, December 1st, 1886.

JACINTO VILLAGENTIN.

Judge of First Prosecution
J. M. de la Torre/

1151 (At the top of the first page of this document there is a square red seal bearing the words: "Sello 11° As, 1884 y 85--37 1/2 C. de Peso"; also a stamp in blue bearing the words: "Expenduria de efectos timbrados del quinto Distrito—Monte—89—Habana"; also written with lead pencil the words: "Marriage Nicolas Jose del Pozo & Dorotea Marcos, daughter of Miguel Marcos & Teresa Rodriguez"; also in print, viz: N. O. 157.253.)

Don Gonzalo Usera y Rodriguez Pbro Cura interno de la Parroquia de Firmino de Jesus Maria y Jose Certifico; que en el lebro 2 de Matrimonios de blancos ál fô 63 Pto y No. 350 se halla la partda seqte.

En la Yglesia Ansiliar de Jesus Maria y Jose extramuros de la Habana en viente de Setiemble de mil ochociente es veinte, habienda, preceded las diligencias judiciales por an te D. Jose Martinez Notario de matrimonias y proclamando en tres dias de precept sin resultar impedimente yo D. Prdro Jose Yufante Feniinte de conra Coadjutor de dicha Yglesia de spa se y velá segun órden de Xtra Sta Madre Yglesia a D. Nicolas Jose del Pozo natural del Santo Cristo del Potosi jurisdicion de San Miguel de Padron hijo legitimo Feniente Coronel Da Ygacio del Poso y de Da Rosa de Lima y a Da Dorotea Paula Plutarca Marcos natural da San Augustin de la Florida vicinos de esta jurisdicion hija ligitima de D. Miguel Marcos y de Da Teresa Rodriguez. Solteros entrambos contrayentes á quienes habiend habiendoles pregunted tuve por respuesta su unituo consentimente estand presente D. Jose Ferandez Urbite Ordenante y laspadrinos D. Jose del Pozo y Da Teresa Rodriguez Confesaron y Comulgarm y lo firmé.

PEDRO JOSE YNFANTE.

Es conforme á su original. Habana Mayo cinco de mil ochocientas ochen. Pta. y cuatro.

GONZALO USERA.

(To the foot of the foregoing is affixed a stamp bearing the words "Parroquia de term no de Jesus Maria y Habana".)

Indorsed: "Complainant's Exhibit No. 5, hearing May 5, 1910. Signed by counsel by initials for the purpose of identification. W. W. D. E. E. H."

"Filed June 8, 1911. E. O. Locke, Clerk."

1152 Don Gonzalo Usera Rodriguez, Priest of the Parish of Jesus Maria Jose, certify: That in Book 2 of whites marriages, folio 63 over, number 350, is found the following:

In the Church of Jesus Maria Jose, outside the walls of Habana, on the 20th day of Sept/ 1820, after taking all judicial steps, in the presence of Don Jose Martinez, notary of marriage licenses, and proclaimed the marriage banns for three

days—no impediment arising therefrom—I, Don Pedro Jose Infante, assistant priest coadjutor of said Church of Jesus Maria Jose, married and had them keep the vigil, according to the Holy Mother Church, Don Nicolas del Pozo, native of Santo Christo del Potosi, jurisdiction of San Migueldel Padron, legitimate son of Lt. Col. Ygnacio del Pozo, and Dona Rosa de Lima, to Dorotea Paula Plu-tarca Marcos, native of San Agustin, Florida, resident of this jurisdiction, and legitimate daughter of Don Miguel Marcos and Dona Teresa Rodriguez. Both contracting parties being single I had previously asked them and received their reply of mutual consent—being present at the time Don Jose Francisco Urbieta, who was ready to receive orders, and Dona Teresa Rodriguez. They confessed and received holy communion and thus I sign.

PEDRO JOSE YNFANTE.

It agrees with the original. Habana, May 5th, 1884.

GONZALO USERA.

1153

(At the top of the 1st page of the following are found the following, viz: Written with lead pencil: "Baptism of Christina, daughter of Nicholas del Pozo & Dorotea Marcos." Printed in black ink: "N. O. 675,084." Seal in green ink, bearing the words: "Sello 11° As. 1886 y 87—Colon—Europa—America—Africa—55 C. de Peso". A seal or stamp, the lettering of which is indecipherable.)

Dor. D. Agustin Ma Manglano y Guaxardo Pbro Cura into de esta Yglesia parroquial de termino de Ntra. Srá de Guadalupe de la Ciudan de la Habana, certifico: que en el lebro 21 Cantisnos deblanros áf 33 v° 192, se halle la sequente.

Partida No. 192 Christina del Pozo. Iueves treinta de Agosto de mil ocho cientos trenta y dos anos: Yo Dr. Nicolas José Manjon, Cura de esta parroquia de Quadalupe estarneros de la Ciudad de la Habana bantin solemnemente á un mira, que na ció el dia veinte y cuatro de Julio anterior hija legitimoa de Da Nicolas del Pozo, natural de la Ciudad dela Habana, y de Da Dorotea Marcos, que le es de Florida y Da Rosa Lima; maternos el Teriente de Artilleria D. Miguel Marcos, y Da Teresa Rodriguez; y en ella sferí las Sanas Cere-
1154 monies y preces, y perse por numbre Christina: fueron sus padronos Da Bernardino del Pozo, y Da

Lionisia Marcos á quienes adverti elparentesco espiritual y lo firma de ord del Exefino. Sor Vicarie grat. Capit. su fech a trace de Abril de mil ocho ccent, triente y tres Pfro.

JUAN DE LEDESMA.

Concuerva con su original. Habana, Diciembre dos de mil ochocientos ochenta y seis.

DOX. AGUSTIN M. MANGOLANS,
Pbro.

Indorsed: "Complainant's Exhibit No. 6, hearing May 5th, 1910. Signed by counsel by initials for identification. W. W. D. & E. E. H. Filed June 3, 1911. E. O. Locke, Clerk."

1155 Don Augustin Maria Manglano Guaxardo, presbyter priest of this Parish Church of Our Lady of Guadalupe of Habana, certify: That in Book 21, of baptisms of whites, folio 33, number 192, is found the following record:

Thursday, the 10th day of August, 1832, I, Don Nicolas Jose Manpu, priest of this parish of Guadalupe, outside the walls of Habana, solemnly baptised a girl who was born the 24th of July, legitimate daughter of Don Nicolas del Pozo and Dona Dorotea Marcos, who is a native of Florida and resident of this parish/ Paternal grandparents are Lt/ Col/ Don Ignacio del Pozo, and Dona Rosa Lima; maternal grandparents are Lt/ of Artillery Don Miguel Marcos and Dona Teresa Rodriguez—after anointing her with the holy oils and performed all the sacred rites of the Holy Church, I gave her the name of Christina. Her godparents were Don Bernardino del Pozo and Dona Dionisia Marcos. I informed them of their spiritual relationship, and I sign it by order of His Ex/ the Wicar Gen/ Date/ 13th April, 1833.

PRESBYTER JUAN DE LEDESMA.

It agrees with the original. Habana, December 2nd, 1886.

DR. DON AGUSTIN MARIA MANGALANO.

The notaries public of the College of Notaries of the Hon. Court of Habana, residents of this city, legalize the signatures and rubric of the Presbyter Don Andred Martinez, parish priest of the Church of Yngreso de San Agustin de Ceiba

Mocha, Providence [Province] of Matanzas, Diocese of Habana, who is at present performing sacerdotal duties. We give entire credit and faith to his signature and rubric to be exactly like the former ones used, and certify there is no difference and thus to justify it we extend the present with the seal of our college, in Matanzas, December 2nd, 1886. Amended Matanzas—Vale/

BONIFACIO DOMINGUEZ.
MANUEL ZAMBRANA.

1156

(At the top of the first page of this document is written with lead pencil the following, viz: "Marriage certificate of Da Christina del Pozo and Don Alexander Marcos Nunes de Villavicencio p. 4". On left hand margin of said first page, written with lead pencil, the following, viz: "Marriage of Christina del Pozo to Alexander Villancencio".)

Francisco Abascal y Venero, Presbitero Cura Parroco de la Yglesia de Término del Santo Angel Custodia de la cindad, provincia y diocesis de la Habana.

Certifico: Qeu el Libro octavo de Matrimonios de Espanoteial folio 105, y con el numero 246 se halla la sequiente:

Partida. "En la Cindad de la Habana, al viente y cinco de Octubre de mil ochocientos sesenta y dos anos; previas las diligencias necessarias porante el Pbro Monsiñor D. Pedro Sanchez Secretario de camara y Gobino, habiendole despensado el Exmo i Getno Soe Obispo Diocesan bas tres canonica amones tariones con su lirencia in scriptia pase á la casa morada de la contra yente y estando en ella y habiendotos examinados en la doctorna cristina y no constandome de impedimento algurno:

1157 Yó el Pbró D. Juan Gabian cura propio de esta Yglesia Parroquial de Terninus del Santo Angel Custodio disposi en la formo ritual y- les previne se velasená la mayor brevedad a D. Alyandro Jose Marcos Nunez de Villavicencio, con Da Crestina del Pozo, naturales de estra cindad el estrado solteros y vecinos de la feligresia del D. Alejandro y de Da Maria Belen Alvarez y las gunda de D. Nicolas y de Da Dorotea Marcos, cuejos contragen tes interrogados en debida forma dievon for respuesta su mutero consentuncca to confession of connulgaron, furon Padrinos los padres del contrayente y Fes-

tigos D Ysidro Martin Marliny y D. Pedro Marbin Rivero y lo firme.

[Rubricado] JUAN GALIAN.

Concorde con su original. Habana, quince de Mayo de mil novecientor nueve.

FRANCISCO ABASCAL, Ptro.

(Here is impressed an oval shaped stamp in blue ink bearing the words: "Parroquia de Termino del Santo Angel Custadio Habana".)

Indorsed: "Complainant's Exhibit No. 7, hearing May 5, 1910. Signed by counsel for identification with their initials, W. W. D., E. E. H."

"Filed June 8, 1911. E. O. Locke, Clerk."

1158 Francis Abascal Wenero, presbyter parish priest of the Church Termino del Santo Angel Costodio, of the City, Province and Diocese of Habana, certify:

That in Book 8, of Matrimonies of Spaniards, on folio 105, number 246, is found the following:

In the City of Habana, on October 25th, of 1862, the necessary transactions being previously taken before the government secretary, Presbyter Monsenor Don Pedro Sanchez, and His Ex/ the Bishop of the Diocese having dispensed the three banns, with his permission in writing, I went to the residence of the contracting parties and having examined them in the Christian doctrine and satisfying myself that there was no impediment, I, the presbyter, Don Juan Galian, curate of this Parochial Church of Termino del Santo Angelo Custodio, married, with the ritual form, and warned them to keep the wigil, [vigil] as early as possible, Don Alejandro Jose Marcos Nunez Willavicencio and Dona Cristina del Pozo, natives of this city, single, and of the Parish of Monserrate, legitimate children, the first of Don Alejandro and Dona Belen Alvarez, and the second of Don Nicolas and Dona Dorotea Marcos/ The contracting parties being interrogated in due form made reply that it was by mutual consent. The attendants were the

parents of the contracting parties, and the witnesses, Don Isiro Martin Martinez, Don Pedro Martin Rivero—and I sign it.
[Rubricated] JUAN GALIAN.

It agrees with the original. Habana, March 15th, 1909.
FRANCISCO ABASCAL.

1159 At the top of the first page of this document is written with lead pencil in English, the following, viz: "Burial Certificate of Da Dorothea Marcos y Rodriguez, daughter of D. Miguel & Teresa, & widow of Nicholas del Pozo."

"Monse°or Emilio Fernandez y Gonzalez, Prelado Domestico de S. S. y Cura propio de la Iglesia Parrocuial de termino de Nuestra Se°ora de Monserrate de la Habana.

Certifica: que en el Libro ventidos de Defunciones de Blancos—á fojas 35 numero 181 se halla la parteda seguiente:

En seis de Marzo de mil ochosientos selenta nueve anos, se dir sepultura en una de las bovedas del Cementerio de Cristóbal Colón, sequin certifico su Copellein, al cadaver de Da Dorotea Marcos y Rodriguez, natural de S. Agustin, Florida, hija de setenta y siete año de edad, Vinda de D. Nicolas del Pozo y Lrina, dejó por sucesión á Da Rosa Da Teresa, Da Cristina Da Pilar, D. José Quèntin, D. Basèlio, D. Nicolas D.
1160 Simeon, D. Ladislaw D. Nicolás, Serafin y D. Enrique del Pozo, no testó, recibir los Santos Sacramentos le Penitencia, Eucaristia y Extrenia Uncion y lo firma.
DR. ANACLOTO REDONDO.

Es conforme á su original. Habana catorce de Mayo de mil novicientos nueve.
MONS. EMILIO FERNANDEZ.

(At this point is a stamp bearing the words "Parroquia de Termino Monserate de la Habana" in purple ink.)

(Following the above, written with lead pencil, in English, the following, viz: "Certificate" reads—This conforms to the original. 14 of May, 1909. (Signed) Emelio Fernandez." Sealed with the parish seal of the District of Monserrate of Havana.)

Indorsed: "Complainant's Exhibits No. 8, hearing May 5, 1910. Signed by initials of counsel for identification, W. W. D., E. E. H."

"Filed June 8, 1911. E. O. Locke, Clerk."

1161 Monsenor Emilio Fernandez Gonzalez, prelate of his holiness and curate of the Parochial Church of Termino of Our Lady of Monserrate of Habana, certify: That in Book 22, of death of whites, folio 35, number 181, is found the following:

On March 6th, of 1879, burial was given in one of the niche of the Cemetery of Cristobal Colon, as was certified by its chaplain, to the body of Dona Dorotea Marcos Rodriguez, native of Saint Augustine, Florida, daughter of Don Miguel and Dona Teresa, she was seventy-seven years old, widow of Don Nicolas del Pozo Lima. She left eleven children: Dona Rosa, Dona Teresa, Dona Christian, Dona Pilar, Don Jose Quintin, Don Basilio, Don Nicolas, Don Simeion, Don Simeion Ladislao, Don Nicolas, Serafin, and Don Enrique del Pozo. She did not testate. She received the last penitential sacraments of the Holy Eucharist and Extreme Unction/ And I signed it.

DR. ANACLETO REDONDO.

It agrees with the original. Habana, May 14th, 1909.

MONSENOR EMILIO FERNANDEZ.

1162 Ldo/ Luis de Zuniga Barrera, Municipal Judge, by substitution, of the Northern District, and in charge of the civil register of the same, certify: That in Book 9, of deaths of Guadalupe, on folio 343 over is certified the act which says: Number 468—Dona Cristina del Pozo Marcos de Nunez./ In the City of Habana at eleven o'clock in the morning of the 31st of March of 1889, appeared before Licenciado Don Juan Pablo Fonarely, Municipal Judge of the District of Guadalupe, and Don Gabriel Roig Mallas, secretary pro tem, Don Carlos Penuna Gonzalez, native of this city, of age, single, clerk, and resident of number 184 Habana Street, with a certificate of eleventh class, expedited the 15th of the present month by the mayor of the District of Santa Clara, stating

that Dona Cristina del Pozo Marcos de Nunez, a native of Habana, 56 years of age, married, died in her home, Galiano Avenue, number 10, at one o'clock yesterday afternoon, of pleuro pneumoria tuberculosis, of which he gives notice in due form. He also declares that said corpse was the legitimate daughter of Don Nicolas del Pozo Lima, and Dona Dorotea Marcos Rodriguez, deceased; that at the time of her death she was married to Don Alejandro Nunez de Villavicencio Alvarez, native of this city, of age, notary public. Living with the deceased and from the marriage she leaves four children, Alejandro Arturo, Alfred, Ernesto, and Amelia. She left a will with the concurrence of her husband, made before the notary of this city, Don Joaquin Alfonso, in the year 1886, that the deceased must be buried in the Catholic Cemetery of Colon. In view of these statements and the physician's certificates presented, the Hon. Municipal Judge granted that a permit be extended for the burial. The witnesses were: Don Martin Valdez Ruiz, resident of Egido Street, number 105, and Don Serafin Pelaez Hernandez, resident of Virtudes Street, number 57, both natives of this city, of age, married, and employed in their respective work with certificates from the mayor of the District of Colon. This act being read, each was asked to read it for himself if he so desired. The seal of the
1163 Municipal Judge was placed upon it, and it was signed by the Judge, the declarer and the witnesses, all of which as secretary I certify to. There is a seal.

J. PABLO FONARELY.

CARLOS PEUMA.
SERAFIN PELAEZ.
MARTIN W. RUIZ.
GABRIEL RUIZ.

This is given by request in Habana, May 17th, 1909.

LUIS DE ZUNIGA,
The Secretary.
JOSEPH P.

1164 (At the top of first page is written with lead pencil the following: "Death certificate of Da Christina del Pozo y Marcos de Nunez. Not a burial certificate by a priest but a municipal certificate by a Judge.")

Ldo. Luis de Zuniga y de la Barrear Jueg Municipal por

substitution del Distrito Norte y En cargo de del Registro Civil del mismo.

Certifico que en el tomo noveno de Defunciones de Guadalupe, al folio tres cientos cuarentetres vuelto consta al acta que dice: Nuevo 468 Da Chistina del Pozo y Marcos de Nuñez en la Cindad de la Habana á las once de la manana del dia tréntay uno de Marzo de mil ochocientos ochentay mene ante el Licencio de Don Juan Pablo Fonarely Juez Municipal del Distrito de Guadalupe y Don Gabriel Roeg y Millas Secretario Suplente comparein Don Carlos Peuna Gondalez natural de esta Cindad mayor de edad sotte ro dependente ef veino de la carre dela Habana numedo ciente ochencenatro con su cedula de undecimo clase espedida quincé del mes actual for el Alcalde del barrio de Santa Clara manifestando que Dona Christina del Pozo y Marcos de Nunez natural de la Habana de cincuentaseis ano de edad casada fanecio en su domicilio calza do dá Galiano numero diez á la una de la tarde del dia de ayer á causecencuria de pleuro neumonia tubercnlosa de lo cual dá parte en delida forma yademás d clara: Que duho fura da era hija legitima de Don Nicolas del Pozo y Lima y de Dona Dorotea Márcos y Rodriguez ya defusetos: que estala casa do en el acte del fellecimento con Don Alejandro Nunez de Villavicencio y Alverez natural de esta Cindad mayor de edad notario public do murrlia do en el de la finada de cuyo matrimonio defó cuatro hijoo nombra dos Don Alexandro Arturo Don Alfredo Don Ernesto y Donna Amelia que otorgó testaments de con su consorte ante el Notario de esta Cindad Don Joaquin Lancis y Alfonso el ano de mil ochocentos ochanta y seis: que al cadaver re la ha de dar sepultura en el
1165 Cementerio Catolico de Colon: En vista de estas manifestaciones y dela certificacion facultatna presentada el Señor Juez Municipal despenso que se esta dírse la presente a eta y se espidiesela licencia de enterramente testigos presen les Don Martin Valdes Ruéz secino de la calle de Eigdo numero ciento cureo y Don Serafin Pelaez y Hernandez Vecino de la calle de Vertudes numero cinenentásiete amlos naturales de esta Cindad mayores de edad casados empleados con sus correspondéntes, cedulas pers du ales espedidas por el Alcalde del Carrio de Colon: Lu da integremente es la a et i unve tadas las personas que del en suscribilra á que la leyeran por si mismos si as ils cruian conceniente se estampo en ula el sello

del Juzgado Municipal la firmaran el Señor Juez el de el arant y los testigos de to do lo que co mo Secretario certifico Hayun sello J. Pablo Fonarely; Carlos Feuma; Sarafin Pelaez; Martin V. Ruiz; Gabriel Ruiz; Y apetician de parte espido la presente Habana Mayo drez y sutr de mil noveciente
1166 un ere.

LUIS DE ZUNIGA,
El Secretario.
JOSEF PERSEL.

Dehoso NocS Art 115 y 118 R Co.

Filed June 8, 1911. E. O. Locke, Clerk.

(There is a stamp appended or impressed bearing the words: "Juzgado Municipal del Distrito Norte—Habana.")

Indorsed: "Complainants exhibit No. 9. Hearing May 5, 1910. Signed by initials of counsel for identification. W. W. D., E. E. H."

1167 Baptism of Ernesto.

Pbro Jose Miguel de Hoyos y Barrutia, Cura Parroco dela Yglesia de termino de Ntra Sra. de Guadalupe dela Cindad dela Habana. Certifico que en el libro 33 de 985, esta la sequiento:

"Miercoles tres de Marzo de mil ochocientos sesenta y nueva Yo D. Juan Galian, Cura Parroco dela Yglesia determino de Ntra. Cra. de Guadalupe dela Cindad de la Habana: bautise solemnemente al niño Ernesto Elíntario que nació el dia veinte de febrero ultimo, hijo legitimo de D. Alejandro Nunez Villavicencio y de Da. Cristina del Pozo naturales dela Habana y vecinos de esta felegresia: almelos paternos D. Alejandro y Da. Balen Alvarez: matgrnos D. Nicolas y Da. Dorotea Marcos: fueron sus padrinos sus tira D. Santiago Gonzalez y de Avila y Da. Balen Nunez de Villavicencio y Alvrez; á quienes adverti el parentesco espiritual que contrajeron; y lo firme.

JUAN GALIAN.

Con cuerda con su original. Habana trese de Mayo de mil novecientos nueva.

JOSE MIGUEL DE HOYOS.

(A stamp is affixed bearing the words: "Parroquia de termino de nuestro, Habana".)

1168 Indorsed: "Complainant's Exhibit No. 10, hearing May 5, 1910. Signed by initials of counsel for identification, W. W. D., E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1169 Presbyter Jose Miguel de Hoyo Barrutia, parish priest of the Church of Termino de Nuestro Senora del Guadalupe of the City of Habana, certify: That in Book 33, of baptisms of whites, at folio 489, number 985, is the following:

Wednesday, the third of March, 1869/ I, Don Juan Galian, parish priest of the Church of Termino de Nuestra Senora del Guadalupe, of the City of Habana, solemnly baptized the child Ernesto Eleutario, who was born on the 20th of February last, legitimate son of Don Alejandro Nunez Willacencio and Dona Cristina del Pozo, natives of Habana and residents of this parish; paternal grandparents Don Alejandro and Dona Belen Alvarez; maternal, Don Nicholas and Dona Dorotea Marcos. His godparents were his uncle, Don Santiago Gonzales de Avila, and his aunt, Dona Belen Nunez de Willacencio Alvarez --whom I notified of the spiritual relationship they contracted and I signed it.

JUAN GALIAN.

It agrees with the original. Habana, May 13th, 1909.

JOSE MIGUEL DE HOYOS.

1170 Marriage of Maria Graica Marcos Rodriguez to Agustin Garcia.

Dor Manuel J. Dobal, Phr cura francco dela Yglesia de Carmino Jesus Maria y Jose de esta Cindad y Dioceses Certifico Que en el lebro segundo de Matrimonies de Blancas á fojas ciento ocho parteda sq quecentos noventa y uno se halla la siguiente.

En la Yglesia Aug 2 do Jesus Maria José extramuros de la Habana, en diez y siete do Novembre de mil ochocientos vénte

y cinco anos, habiendo precedéd las diligencias judiciales pr ante D. Jose Martinez Notario de Matrimonios y proclamados en tres diss de precipto sin resultár impedimento To D. Dr. Jose Miguel Suarez Teniante Perpetuo de dicha Yglesia desposi y velé segun ordur de Ntra Sta Madre Yglesia á S. Agustin Garcia natural de esta Barrio hijo legitimo de D. Pedro Garcia y de Da. Micaela Diaz vindo de Da. Yrene Garsino Da. Maria de Gracia Marios, natural de St. Agustin de la Florida, hija legitima de D. Miguel Marcos y de Da. Teresa Rodriguez vecinos de esta jurisdicion solteros entrambos contrayentes á quienes habiendoles preguntar de tuve pr. respuesta su mutus consentimiento, estando presentes D. Manuel Palma, ordenante y los padrinos D. José del Pozo y Da. Teresa Rodriguez, confesaron y comuljaron y lo firme.

[Rubricado] DR. JOSE MIGUEL SUAROS.

1171 Escopea de su original Habana veinte yuno de Mayo de mil novecientos nueva.

DR. MANUEL F. DOBAL.

(On the margin is affixed a stamp bearing the words: "Paroquea de termino de Jesus Maria y Jose Habana".)

Indorsed: "Complainant's Exhibits No. 11, hearing May 8th. 1910. Signed by initials by counsel for identification. W. W. D., E. E. H. Filed June 8, 1910. E. O. Locke, Clerk."

1172 Cathedral.
Maurice P. Foley,
Rector.

St. Augustine, Fla.

Copy of Marriage Record of Miguel Marcos and Teresa Rodriguez—1796.

Lunes dia quatro de Enero de mil setecientos noventa y seis despues de practicadas las diligencias de solteria ante mi abajo firmado y leidas las tres amonestaciones quqe dispone nuestra Santa Madre Yglesia, entre tres dias festivos a la Misa Mayor: 1s primera, la fiesta de San Silvestre Papa; la sugenda, le

dia de la circumcision de Nuestro Señor; y la tercera, la fiesta del Apostol San Jpan' y evaguadas las demas formalidades, y lo necessario, no resultando impedimento alguno, Yo Don Miguel O'Reilly, Cura beneficiado, Vicario, y Juez Eclesiastico de esta Yglesia parroquial, y Provincia de San Augustin de la Florida etc., recibí el mutuo consentimiento á Miguel Marcos, Sargento del Real Cuerpo de Artilleria viudo de Ysabel Luiza Hernandez, hijo legitimo de José, y de Rosa Fuentes naturales del lugar de Castillejo, Obispad de Ciudad Rodrigo, Reino de España: y a Teresa Rodriguez, viuda de Don Julian de Salas, hija legitima de Lorenzo Rodriguez, y de Ysabel Casibada Piuma, vecinos de esta Ciudad cuyo consentimiento dieron mutuamento por palabras de presente que haven verdadero y legitimo Matrimonio, recibiendo solemnemente Miguel Marcos por su legitima muger y esposa á Teresa Rodriguez, y esta, al referido Miguel Marcos por su marido y ligitimo Esposo, á mi presencia, y de los testigos, que fueron Don Manyel Fernandez Bendicho, y Doña Rafaela Rodriguez, vecinos de esta Ciudad; saben la doctrina Christina; confesaron y comulgaron en dicho dia; y para que conste lo firmo.

MIHUEL O'REILLY.

Filed in evidence as Complainant's Exhibit No. 11 this Jan. 9, 1909. C. B. Robinson, Special Master.

1173 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 18, 1908.

I do certify that I am the assistant to the Rt. Rev. Wm. J. Kenny, Bishop of St. Augustine, and that I am under said bishop the custodian and in charge of the parish records of the Catholic Church at St. Augustine, Florida, containing the record of marriages, baptisms and deaths of the members of the Catholic Church at St. Augustine, Florida, as entered by the parish priests of said Catholic Church, and which are the official records of said Catholic Church at St. Augustine; that the foregoing is a true copy of the original entry which ap-

pears on page 121 of Book 1, of the record of white marriages, of said Catholic Church in my charge.

Witness my hand this eighteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impression of seal of "Cathedral of St. Augustine," St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1174 Translation of Marriage Record of Miguel Marcos and Teresa Rodriguez.

Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla.

Monday, the fourth day of January, seventeen hundred and ninety-six, after establishing their single estate before me the undersigned, and after the publication of the banns as commanded by Our Holy Mother the Church, at the principal mass on three feast days; the first on the feast of St. Silvester Pope; the second, the day of the circumcision of our Lord; and the third, on the feast of St. John the Apostle; and having complied with the remaining formalities and necessities, and no impediment resulting, I, Don. Michael O'Reilly, benefieed priest, vicar and ecclesiastical judge of this parish church and Province of St. Augustine of Eastern Florida, etc., received the mutual consent of Michael Marcos, sergeant of the Royal Corps of Artillery, relict of Isabel Luisa Hernandez, legitimate son of Joseph, and of Rosa Fuentes, natives of the town of Castillejo, of the Diocese of the City of Rodrigo, in the Kingdom of Spain; and of Theresa Rodriguez, relict of Don. Julian de Salas, legitimate daughter of Lorenzo Rodriguez, and of Isabel Casibada Piuma, residents of this city, which consent they mutually expressed by word of mouth, which constitute a true and legitimate marriage, Michael Marcos taking solemnly for his lawful wife and spouse Theresa Rodriguez, and

she taking the above mentioned Michael Marcos for her lawful husband and spouse, in my presence and in that of the witnesses, who were Don Manuel Fernandez Bendicho, and Donna Rafael Rodriguez, residents of this city. They are instructed in Christian doctrine; they confessed and communicated the same day. In faith whereof I attach my signature.

MICHAEL O'REILLY.

Filed in evidence as Complainant's Exhibit No. 12, this Jan. 9, 1909. C. B. Robinson, Special Master.

1175

Cathedral.
Maurice P. Foley,
Rector.

St. Augustine, Fla., December 18, 1908.

I do hereby certify that the foregoing is a true and correct translation of the foregoing attached document, the original of which in the Spanish language is found on page 121, of Book 1, of the record of white marriages of said Catholic Church in my charge.

Witness my hand this eighteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impression of seal of Cathedral of St. Augustine, St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1176 Baptism of Genaro Garcia y.

Dor Manuel J. Dobal Ptro cura parroco dela Yglesia de Termino de Jesus Maria y Josi de esta Ciudad y Diocesis Certifico Qnr en el lebro septimio de Bautismos de Blancas á fojas vemte y seis partedo no. doscientos doce se halla la siguente.

Domingo premero de Octobre de mil ochocientos veinte y seis años To D. Jose Meguel Buecio encargado pr F. E. Tllu-

ma pr. ancencia del Perpetua de la Yglesia Aux. 2 de Jesus Maria y Josi extranueros dela Habana beautice y puse los santos oles á un ueqo of Fnació el diez y nueva de Septiembre proximo pasado hijo leritimo de D. Agustin Garcia, natural dela Havana, ye de Da. Maria de Garcia, Marcos, natural de San Agostin de la Florida, vecinos de esta jurisdicion Abuelos paternos D. Pedro Garcia y Da. Micalla Diaz Maternos D. Miguel Marcos y Da. Teresa Rodriguez, en el ge ijeruloa sacras ceremonias y preres y puse for nombre Genaro Maria fueron sus Padrinos D. Rafael Garcia y Da. Micaela Diax á quienes adverti el parentesco espiritual y lo firmi.

JOSE MIGUEL BUCELO.

I Hay unó rubrica.

Escopea de su original. Habana veinte y uno de Mayo de mil nuvenentos nueva.

DOR° MANUEL F. DOBAL.

1177 (A stamp is affixed bearing the words "Parroquia de Termino de Jesus Maria y Jose Habana".)

Indorsed: "Complainant's Exhibits No. 12, hearing May 5,1910. Signed by initials of counsel for identification, W. W. D., E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1178 Don Manuel Dobal, presbyter parish priest of the Church of Termino de Jesus Maria y Jose, of this city and diocese, certify: That in Book 7, of baptisms of whites, at folio 26, record number 212, is found the following:

Sunday, 1st of October, of 1826. I, Don Jose Miguel Bucelo, in charge for His Illustrious Ex/ on account of the absence of the permanent curate of the Auxiliary Church of Jesus Maria Jose, outside the walls of Habana, baptized and anointed with the holy oils a boy who was born the 19th day of September passed, legitimate son of Don Agustin Garcia, native of Habana, and of Dona Maria de Gracia Marcos, native of Saint Augustine, Florida, residents of this jurisdiction/ Paternal grandparents, Don Pedro Garcia and Dona Micaela Diaz; maternal, Don Miguel Marcos and Dona Teresa Rodriguez. On this child I exercised the sacred rites and gave him the name of Genaro Maria. His godparents were Don Rafael Garcia

and Dona Micaela Diaz, whom I notified of the spiritual relationship contracted, and I signed.

JOSE MIGUEL BUCELO.

There is a rubrica.

It is a copy of the original. Habana, 21st of May, 1909.

DR. MANUEL J. DOBAL.

1179 Copy of Record of Baptism of Miguel Josef Eustaquio Marcos—1800.

Cathedral.
Maurice P. Foley,
Rector.

St. Augustine, Fla.

Jueves dia seis de Noviembre de mil ochocientos Yo Don Miguel O'Reilly Cura beneficiado, FVicario, Juez Eclesiastico de esta Yglesia parroquial, Plaza y Provincia de San Augustin de la Florida, etc.; bautisé y puse los santos oleos a una niño, que nació el dia dos del presente mes, hijo legitimo de Mihuel Marcos, sargento primero del Real Cuerpo de Artilleria, natural de Castellejos, Obisbado de Ciudad Rodrigo, hijo de Josef, y de Rosa Fuentes; y Teresa Rodriguez, natural de la Havana, hija de Lorenzo, y de Ysabel Piuna; y en el exercí las sarcas ceremonias y preces de Nuestra Santa Madre Yglesia; y le puse por nombre Miguel Josef Eustaquio; fueron sus padrinos D. Manuel Fernandez, y D. Rafael Rodriguez, vecinos, de esta Ciudad; les advertí el parentesco espritual y demas obligationes; y lo firmé en dicho dia, mes y año.

MIGUEL O'REILLY.

Filed in evidence as Complainant's Exhibit No. 13, this Jan. 9, 1909. C. B. Robinson, Special Master.

1180 Translation of Record of Baptism of Miguel Josef Eustachio Marcos—1800.

Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla.

Thursday, the sixth day of November, in the year eighteen hundred, I, Don Michael O'Reilly, beneficed clergyman, vicar, and ecclesiastical judge of this parish church, City and Province of St. Augustine of Florida, etc., baptized and placed the holy oils on an infant who was born the second day of the present month, the legitimate son of Michael Marcos, first sargeant of the Royal Corps of Artillery, native of Castelljos of the Diocese of the City of Rodrigo, son of Joseph, and of Rosa Fuentes; and of Theresa Rodriguez, native of Havana, daughter of Lorenzo and of Isabel Piuma; and over him I recited the prayers and performed the sacred ceremonies of Our Holy Mother Church, and I imposed on him the name of Michael Joseph Eustachio; his godparents were Don Manuel Fernandez and Donna Rafael Rodriguez, residents of this city. I informed them of the spiritual relationship contracted and of their other obligations and I attached my signature to this record on the same day, month and year.

MICHAEL O'REILLY.

Filed in evidence as Complainant's Exhibit 14, Jan. 9, 1908. C. B. Robinson, Special Master.

1181 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do certify that I am the assistant to the Rt. Rev. Wm. J. Kenny, Bishop of St. Augustine, and that I am under him, the said bishop, the custodian and in charge of the parish record of the Catholic Church at St. Augustine, Florida, con-

taining the record of marriages, baptisms and deaths of the members of the Catholic Church at St. Augustine, Florida, as entered by the parish priests of said Catholic Church, and which are the official records of said Catholic Church at St. Augustine; that the foregoing is a true copy of the original entry which appears on page 33 of Book 3, of record of white baptisms, of said Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector of Cathedral.

[Impress of seal of "Cathedral of St. Augustine", St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1182 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do certify that the foregoing is a true and correct translation of the foregoing attached document, the original of which in the Spanish language is found on page 33, of Book 3, of record of white baptisms, of the Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impress of seal of "Cathedral of St. Augustine", St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1183 Dor Manuel J. Dobal Ptro cura parroco de la Yglesia de Cermino de Jesus Maria y José de esta Ciudad y Diocisis Certifici Que en el lebro tercero del Matrimonios de Blancas a fojas ciento cinco partida numero doscintos ochenta y siste se halla la sequiente.

En la Yglesia Augr. de Jesus Maria y Jose Extrannesos dela Habana en ochos d de Septiembre de mil ochocientos cuarenta y cinco as Habiendo precedido las diigancias extra judiciale y proclamados sutoes dias fis livos sin resultar impedimento Yo Fr. Runigia Cernadas Mtro del orden de pu decadores, Dr en filosofia y Sagrada Caslogia y Cerviente Ceva Fort de dicha Yglesia Despose y Velé segun order de Ntra Sta Madre Yglesia dé Don Genaro Maria Garcia, natural y veciro de esta feligresia, hijo lexmo de Don Agustin Garcia y á Dona Adela Pichardo, natural del Espiritu Santo, vecina de esta jurisdicion, hija natural Ldo Don Esteban Pichardo y de Da Dolores Paldes, solerrs ambos con trayentes, á qenenes habiendoles pu gentado terve por respuesta su mu tuo consentimiento estando presentes Don Josi Gavay ordenante, y los pa Yrenos Don Jose Cranguitimo Morejon y Da Merced Diaz, comparra y comul-
1184 garon y la firme.

[Rubricated] FR. REMIGIO DE CERNADAS.

Episcopia de su original Habana diez y nueve de Julco de mil novecuentos nueve—m.

DON MANUEL J. DOBAL.

(Here is impressed in oval stamp in green ink bearing the words: "Parroquia de Termino de Jesus Maria y Jose, Habana".)

Indorsed: "Complainant's Exhibit No. 13, hearing 5, 1910. Signed by counsel by initials for identification, W. W. D., E. E. H."

1185 I, Manuel J. Dobal, presbyter, parish priest of the Church of Termino de Jesus Maria y Jose of this city and diocese, certify: That in Book 3 of matrimonies of whites, at folio 105, record number 287, is found the following:

In the Auxiliary Church of Jesus Maria y Jose outside the walls of Habana, on the 8th of September, 1845, having first taken all the extra judicial steps, and proclaimed the banns on three festive days, no impediment resulting therefrom, I, Fray Hemigio Cernadas, minister of the Order of Preachers, Dr. of philosophy and sacred theology, assistant priest of said church,

married and had them keep the vigil according to the rites of the Holy Church, Do Genaro Maria Garcia, native and resident of this parish, legitimate son of Don Agustin Garcia, and Dona Maria de Gracia Marcos, to Dona Adela Pichard, native of Espiritu Santo, resident of this parish, natural daughter of Ldo. Don Esteban Pichard and Dona Dolores Valden, both contracting parties single, to whom having asked, received for a answer that it was by mutual consent, being present Don Jose Garay, under order, and the attendants, Don Jose Tranquilino Morejon and Dona Marced Diaz. They confessed and received holy communion, and sign

[Rubricated] FRAY HEMIGIO DE CERNADAS.

It is a copy of the original. Habana, 19th of July, 1909.

DR. MANUEL J. DOBAL.

1186 Monseñor Emilio Fernandez y Gonzalea, Prelado Domestico de S. S. y Cura de la Iglesia Parroquial de Termino de Nuestra Senoria de Monserate de la Habana.

Certifico: que en el Libro Veintisiete de Defunciones de Blancos á folas 323 numero 647 se halla la partida siguiente:

En veinte de Noviembre de mil Ochocientos ochenta y seis años se dio sepultura en tramo tercero en el Cemeterio de Cristobal Colon segun certificó su Capellán al cadaver de D. Genaro Garcia y Marcos, natural de esta Cindas de sesenta añosde edad viuda de D'a Adelayda Pichardo hijo de D. Agustin y de D'a Altagracia, fallecio á las siete de la noche de ayer en la calle nueva numero ciento cuatro en el casualo, á consecuencia de enfermedad Lesión Orgánico de corazon segun certifico del Dr. D. Luis Mo Montané y la firmé.

DR. ANACLETO REDONDO.

Es conforme á su original. Habana conconde Julio de mil novecientos nueve.

MONS. EMILIO FERNANDEZ.

(Attached is a stamp bearing the following words, viz: "Parroquia de Monserrate de la Habana".)

Indorsed on back: "Complainant's Exhibit 14, hearing March 5, 1910. Signed by initials of counsel, for identifica-

tion. W. W. D. E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1187

Monsenor Emilio Fernandez Gonzalez, prelate and curate of the Parochial Church of Our Lady of Monserrate of Habana, certify: That in Book 27, of deaths of whites, at folio 323, record number 647, is found the following:

On the 20th of November of 1886, burial was given in third piece of ground in the Cemetery of Cristobal Colon, according to certificate of the chaplain, to the corpse of Don Genaro Garcia Marcos, native of this city, of sixty years of age, widower of Donna Adlaida Picharde. He was the son of Don Augustin and Dona Altegracia, he died at seven o'clock in the evening of yesterday, on Ninth Street, number 104, from a sickness known as organic trouble of the heart, according to certificate of Dr. Don Luis Montane, and I sign

DR. ANACLETO REDONDO.

It agrees with the original/ Habana, July 5th, of 19P9.

MONSENOR EMILIO FERNANDEZ.

1188 Copy of Baptismal Record of Paula Plutarca Marcos —1802.

Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla.

Martes dia nueva de Febrero de Milochocientos dod. Yo Don Miguel O'Reilly, Cura beneficiado, Vicario, Juez Eclesiastico de esta Yglesia perroquial, Plaza y Provincia de San Augustin, de la Florida, etc., baptizé y puse los santos oleos, a una niña, que nació el dia seis del presente mes y año, hija legitma de Miguel Marcos, sargento del Real Cuerpo de Artilleria, natural de Castillejo Martin viejo en el Obispado de Ciudad Rodrigo, hijo de Jose, y de Rosa Fuentos; y de su muger, Teresa Rodriguez, natural de Havana, hijo de Lorenzo, y hija Ysabel Castilda Piuma; y en ella exercí las sacras cere-

monias y preces de nuestra Santa Madre Yglesia y la puse por nombre Dorotea Paula Plutarca; fueron sus padrinos Don Manuel Fernandez Bendicho y Doña Paula Romero, vecinos de esta Ciudad, les advertí el parentesco espritual y demas obligaciones, y lo firmé en dicho dia, mes y año.

MIGUEL O'REILLY.

Filed in evidence as Complainant's Exhibit 15, 1909. C. B. Robinson, Special Master.

1189 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do hereby certify that I am the assistant of the Rt. Rev. Wm. J. Kenny, bishop of St. Augustine, and that I am under said bishop the custodian and in charge of the parish records of the Catholic Church at St. Augustine, Florida, containing the record of marriages, baptisms and deaths of the members of the Catholic Church at St. Augustine, Florida, as entered by the parish priests of said Catholic Church, and which are the official records of said Catholic Church at St. Augustine. That the foregoing is a true copy of the original entry which appears on page 78, of Book 3, of record of white baptisms of said Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impression of seal of "Cathedral of St. Augustine", St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1190 Translation of Baptismal Record of Dorotha Paula Plutarca Marcos—1802.

Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla.

Tuesday, the ninth day of February, of the years one thousan eight hundred and two, I, Don Michael O'Reilly, beneficed clergyman, vicar and ecclesiastical judge of this parish church, City and Province of St. Augustine of Florida, etc., baptized and placed the holy oils on an infant who was born the sixth day of the present month and year, the legitimate daughter of Michael Marcos, sergeant of the Royal Corps of Artillery, native of Sastillejo Martin Viejo in the Diocese of the City of Rodrigo, son of Joseph, and of Rosa Fuentes; and of his wife, Theresa Rodriguez, native of Havana, daughter of Lorenzo, and of Isabel Casilda Piuma; and I recited over her the prayers and performed the sacred ceremonies of Our Holy Mother Church, and imposed on her the name of Dorotea Paula Plutarca; her godparents were Don Manuel Fernandez Bendicho and Donna Oaula Romero, residents of this city; I informed them of the spiritual relationship contracted and of their other obligations, and I attached my signature the same day, month and year.

MICHAEL O'REILLY.

Filed in evidence as Complainant's Exhibit No. 16, this Jan. 9, 1909. C. B. Robinson, Special Master.

1191 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do hereby certify that the foregoing is a true and correct translation of the foregoing attached document, the original of which in the Spanish language is found on page 78, of Book

3, of the record of white baptisms, of the Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impression of seal of "Cathedral of St. Augustine", St Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1192 (At the top of the first page of the document is written with lead pencil: "Baptism of Augustin Garcia y Marcos".)

Presbititero Pedro Arambarri, Cura Parroco de la Iglesia de Termino Espiritu Santo de la Habana."

Certifico: que en el libro tréinta y tres de Bnos de Bcos. folio cincuenta y siete numero tres cientos sesenta y cinco se halla la partida siquiente: Sabaso diez y seis de Feb'o de mil ochocientos tréinta y tres a Yo Br. D. Ramon Castañeda Cura Parroco del Sag'o dela S Santa Yglesia Cated'l y resid'te en esta del Espiritu Santo baut'e s solemnem't'e á un niño g'l nació el dia cinco del Corrt's hijo legmo de D. Sgustin Garcia, natural de esta Cindad y de D M'a de Garcia Narcos, natural de la Florida, vecinos de esta felig'a abuelos paternos D. Pedro y D. Micaela Diaz; maternos D. Miguel y D'a Feresa Rodriguez y en niño egerci las sacras ceremn's y preces por nombre Agustin Ricardo; sus padrinos D. Fran'co de la Rosa y D'a M'a de Jesus Hernandez les adverti el parentesco esp'l y lo firme.

BR. RAMON CASTANEDA.

Es conforme á su original. Habana once de Junio de mil novecientos nueva.

PEDRO ARAMBARRI.

(On the left hand margin of the foregoing is a stamp impressed, bearing the words "Iglesia Parroquial determino del Espiritu Santos de la Habana.")

(Indorsed on back): "Complainant's Exhibit No. 15, hearing

May 5, 1910. Signed by initials of counsel for identification, W. W. D., E. E. H." Filed June 8, 1911. E. O. Locke, Clerk."

1193 Presbyter Pedro Arambarri, parish curate of the Church of Termino del Espiritu Santo of Habana, certify: That in Book 33, of baptisms of whites, at folio 57, record number 365, is found the following:

Saturday, the 16th of February, of 1833, I, Br/ Ramon Castaneda, parish curate of the Holy Cathedral Church and resident in this city, of the Parish of Espiritu Santo, solemnly baptized a boy who was born on the 5th of the present month, legitimate son of Don Agustin Gacia, native of this city, and Dona Maria de Gracia Marcos, native of Florida, resident of this parish; paternal grandparents, Don Pedro and Dona Micaela Diaz; maternal, Don Miguel and Dona Teresa Rodriguez; and I exercised on this child the sacred ceremonies and rites, and gave him the name Agustin Ricardo. His godparents were Don Francisco de la Rosa and Dona Maria de Jesus Hernandez, to whom I made known the spiritual relationship contracted and I sign

BR. RAMON ASTANEDA.

It agrees with the original/ Habana, June 11th, of 1909.
PEDRO ARABARRI.

1194 Monseñor Emilio Fernández González Prelado Domestico de S. S. y Cura propio de la Iglesia Parroquial de termino de Nuestra Señora de Monserrate de la Ciudad y Diócesis de la Habana.

Certifico: que en el Lebro quatro de Matrimonios de Blancos, a folio 185 No. numero 450 se halla la partida siguiente:

En esta Yglesia de termino del Monserrate en vern timo de Noviembre de mil ochocientos, sesenta y siete anos, practicata por ante mi las diligencios ordinaria y leidas las tres canonelas amonestacion y sin haber resultado impedimento algonro; yo Ptrs Dr. Q. Anacloto Redondo Cura Parroco de esta Yglesia de termino del Monserrate disposé y velé segirn la forma prescripta por el Ritual Rustano á Q. Agustin Ricardo Garcia natural de esta Ciudad, hijo legitámo de Q. Agustin y de Da. Maria Gracia Marcos virtudo en promeros unpcias de Da. Isa-

bel Prieto y en segun das de Da. Matilde Valdéz y Dona Maria de la Conceptione ochandrina, natural de la Ciudad
1195 de Guanajay en esta Isla; hija legitima de D. Fernando y de Da. Josefa Sanches, de etado soltera folegresco de esta Parroquia, f usun aprobado en doctrina cristiana carfesann y comulgaren y pregunta dos lure por respuesta su mutua consentimiento; fuaun padriurs D. Fernando Ochandarena y Da. Josefa Sanchez hermano y madre de la novia y testigos D. Miguel Centena y Do. Tomai Padilla, y lo firma.

DR. ANDETO REDONDO.

Et conforma á su original. Habana Veintidos de Abril de mil nuevientos diez.

MONS. EMILIO FERNANDEZ.

(To this is affixed a stamp bearing the words: "Parroquia de Termino, Monserrate, de la Habana".)

Indorsed: Complainant's Exhibit No. 16, hearing May 5th, 1910. Signed by counsel by initials for identification. W. W. D. E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1196 Monsenor Emilio Fernandez Gonzales, priest of His Holiness and curate of the Parochial Church of Our Lady of Monserrate, in the City of Habana, certify: That in Book 4 of matrimonials of whites, folio 185, number 450, is found the following:

In the Church of Monserrate on the 21st of November, 1867, having performed before me the duties of a Christian and read the three banns with the result finding no impediment, I, Presbyter Don Anacleto Redondo, parish priest of this Church of Monserrate, married and had keep the vigil according to the form prescribed by the Rustano Ritual, Don Agustin Ricardo Garcia, native of this city, legitimate son of Don Agustin and Dona Maria Garcia Marcos, widower in first nuptials of Dona Isabel Prieto and in second of Dona Matilde Valdez, and Dona Maria de la Concepcion Ochanderena, native of the City of Guanajay in this island, legitimate daughter of Don Fernando and Dona Josefa Sanchez, single, parishioners of this parish. They were questioned on the Christian doctrine, confessed and communed. On being interrogated

gave their mutual consent. The godfathers, or attendants, were D. Fernandez Ochandarena, and Dona Josefa Sanchez, brother and mother of the bride. Witnesses, Don Miguel Centeno and Don Tomas Padilla, and I signed it

DR. ANACLETO REDONDO.

It conforms to the original. Habana, April 22nd, 1910.

MONS/ EMILIO FERNANDEZ.

1197 Copy of Record of Baptism of Maria Gracia Paula Marcos—1805.

Cathedral.
Maurice P. Foley,
Rector.

St. Augustine, Fla.

Juevas dia treinta y uno de Enero de mil ochocientos cinco, Yo Don Miguel Crosby, teniente de Cura beneficiado, Vicario, Juez Eclesiastico Auxiliar de esta Yglesia parroquial, Plaza y Provincia de San Augustin de la Florida, etc., bautise' y puse los santos oleos a una nina que nacio el dia veinte y cinco del presente mes, hija ligitima de Miguel Marcos Sargento Primero del Real Cuerpo de Artilleria, natural de Castillejos, Obispado de Ciudad Rodrigo, hijo de Josef, y de Rosa Fuentes, y de Teresa Rodriguez, natural de la Ciudad de la Habana, Isla de Cuba, hija de Don Lorenzo, y de su muger, Doña Ysabel Casilda Piuma; y en ella exerci' las sacras ceremonias y preces de Nuestra Santa Madre Yglesia; y la puse por nombra Maria de Gracia Paula de la Convercion; fueron sus padrinos Don Manuel Fernandez Bendicho y Doña Rafael Rodriguez, vecinos de esta Ciudad; les adverti el parentesco espiritual y demas obligaciones, y lo firme en dicho dia, mes y ano.

MIGUEL CROSBY.

Filed in evidence as Complainant's Exhibit No. 17, this Jan. 9, 1909. C. B. Robinson, Special Master."

1198 Translation of Record of Baptism of Maria Gracia Paula Marcos—1805.

Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla.

Thursday, the thirty-first day of January, of the year one thousand eight hundred and five, I, Don Michael Crosby, beneficed assistant, vicar and auxiliary ecclesiastical judge of this parish church, City and Province of St. Augustine, of Florida, etc., baptized and placed the holy oils on an infant who was born on the twenty-fifth day of the present month, the legitimate daughter of Michael Marcos, first sergeant of the Royal Corps of Artillery, native of Castillejos, of the Diocese of the City of Rodrigo, son of Joseph, and of his wife, Rosa Fuentes; and of Theresa Rodriguez, native of the City of Havana, of the Island of Cuba, daughter of Don Lorenzo, and of his wife, Donna Isabel Casilda Piuma; and I recited over her the prayers and performed the sacred ceremonies of Our Holy Mother Church, and I imposed on her the name of Maria de Cracia Paula of the Conversion; her godparents were Don Manuel Fernandez Bendicho and Donna Rafael Rodriguez, residents of this city; I informed them of the spiritual relationship contracted and of their other obligations, and I attached my signature on the same day, month and year.

MICHAEL CROSBY.

Filed in evidence as Complainant's Exhibit No. 18, this Jan. 9, 1908. C. B. Robinson, Special Master.

1199 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do certify that the foregoing is a true and correct translation of the foregoing attached document, the original of which

in the Spanish language is found on page 180, of book 3, of record of white baptisms of the Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D. 1908.

MAURICE P. FOLEY.
Rector Cathedral.

[Impression of seal of "Cathedral of St. Augustine", St. Augustine, Fla.]

Indorsed: "Filed June 8, 1911. E. O. Locke, Clerk."

1200 Monseñor Emilio Fernández y González, Pretado Domestico de S. S. y Cura propio de la Iglesia Parroquial de termino de Nuestra Señora de Monserrate de la Habana y con sec autorijacion y Ptro. Jose Vilanova y Muntada Teienta, Cura de la misma.

Certifico: que en el Libro quince de Bantigo de Blancos a fojas 160 se halla la pertida siguiente:

En veinte de Abril de mil ochocientos selents y siete años. Yo Ptro. Dor D. Anceleto Redondo Cura Parroco de esta Yglesia de termino del Monserrate de la Habana bantice solemnemente á nun niño que nació el diá veinte y dos de Noviembre ultimo poniendole por nombre: Ricardo Cecilio hijo ligitimo de D. Augustin Garcia y Marcos, natural de esta Cindad de D'a Concepcion Ochandaren natural de la Villa de Guanajay. Abuelos paternos D. Augustin y D'a Altagracia—maternos, D. Fernando y D'a Josefa Sancheó, pueran sus padrinos, I. Jenaro Garcia Marcos y D'a Monserrate Ochandrina á quienes adverti el parentsco spiritual que contrajion y la firmé.

DR. ANACLETO REDONDO.

Es confirme á su original Habana diersy siete de Junio de mil noreci intos nueva—entre par entrsis—(Marcos)—no vale.

JOSE VILANOVA.

(Stamp here reading: "Paroquia de Tereino del Monserrate de la Habana".)

Indorsed: "Complainant's Exhibit No. 17, hearing May 5, 1910. Signed by counsel by initials for identification. W. W. D. E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1201 Monsenor Emilio Fernandez Gonzalez, prelate of His Holiness and the permanent curate of this Parochial Church of Our Lady of Monserrate of Habana; and by authorization, I, Presbyter Jose Vilanova Muntada, assistant curate of the same, certify: That in Book 15, of white baptisms, folio 160, number 467, is found the following:

On April 20th, of 1877, Presbyter Dr. Don Anacleto Redondo, parish priest of the Church of Monserrate of Habana, solemnly baptized a boy who was born on the 22d of November last, giving him for name Ricardo Cecilio, legitimate son of Don Augustin Carcia Marcos, native of this city, and Dona Concepcion Ochandarena, native of the city of Guanajay, paternal grandparents Don Augustin and Dona Altagracia, maternal Don Fernando and Dona Josefa Sanchez. His godparents were Don Jenaro Carcia Marcos, and Dona Monserrate Ochandarena, to whom I notified the spiritual relationship they contracted and I signed it

DR. ANACLETO REDONDO.

1202 Cathedral.

Maurice P. Foley,
Rector.

St. Augustine, Fla., December 19, 1908.

I do certify that I am the assistant to the Rt. Rev. Wm. J. Kenny, bishop of St. Augustine, and that I am under said bishop the custodian and in charge of the parish records of the Catholic Church at St. Augustine, Florida, containing the records of marriages, baptisms and deaths of the members of the Catholic church at St. Augustine, Florida, as entered by the parish priests of said Catholic Church, and which are the official records of said Catholic Church at St. Augustine; that the foregoing is a true copy of the original entry which appears on page 180, of Book 3, of record of white baptisms of said Catholic Church in my charge.

Witness my hand this nineteenth day of December, A. D. 1908.

MAURICE P. FOLEY,
Rector Cathedral.

[Impression of the seal of "Cathedral of St. Augustine". St. Augustine, Fla.]

Indorsed: Filed June 8, 1911. E. O. Locke, Clerk."

1203 Presbitero Pedro Arambarri, Cura Párroco de la Iglesia de Término del Espirito de la Habana.

Certifico: que en el Libro diez y ocho de Ent. de Beos folio ciento siete .. .. nemero quinientos setenta y sieto se halla le partida siquiente: El dia ceinte y seis de Abril de mil ochociento treinta y seis años se le hicieran los oficios de estilo en esta Parroquias del Espiritu Santo de esta Cindad de la Habana y se enterro en el Cunenterio gral segum certificacion de su Capellan á D. Augustin Garcia natural de esta Cindad y vecino de esta feligresia hijo legitimo de D. Pedro Garcia y de D. Micaela Diaz ya difuntos carado con D. Maria Garcia del Marco y dejo por sus hijos legitimoa á D. Genaro D. Pedro D. Miguel D. Augustin D. Florintino y D. Maria Gertrudis todos meneres y el poster ó posthuma que resultare por hallar se su esposa en cinta como de cuarenta y ochoaños de edad recibio el santo sacremento de la peitencia y extrema uncion y lo firmi.

MIGUEL PEREZ.

Es conforme á su original. Habana once de Primio de mil novecientos nueva.

PECHO ARAMBARRI.

(Stamped on margin "Iglesia Parroquial determino del Espirito Santo de la Habana".)

Indorsed: "Complainant's Exhibit No. 18, hearing May 5, 1910. Signed by counsel by initials for identification. W. W. D. E. E. H. Filed June 8, 1911. E. O. Locke, Clerk."

1204 Presbyter Pedro Arambarri, parish curate of the Church of Termino del Spiritu Santo of Habana, certify: That in Book 18, record of burials, at folio 107, record number 577, is found the following:

On April 26th, of 1836, the offices were performed according to the rites of this Parish of Espirito Santo, of the City of Habana, and there was interred in the public cemetery, according to the certificate of the chaplain, the corpse of Don Augustin Garcia, native of this city, and resident of this parish, legitimate son of Don Pedro Garcia and Dona Micaela Diaz, deceased, married to Dona Maria de Gracia Marcos, and

he left as legitimate children Genaro, Pedro, Miguel Augustine, Florentino and Maria Gertrudis, all minors, and the posthumous which might result as his wife was pregnant/ He was about forty-eight years old. He received the holy sacraments of penance and extreme uncion and I sign

MIGUEL PEREZ.

It agrees with the original/ Habana, June 11th. of 1909.

PEDOR ARAMBARI.

1206 1/2 Department of the Interior,

General Land Office.

Washington, D. C., March 19, 1901.

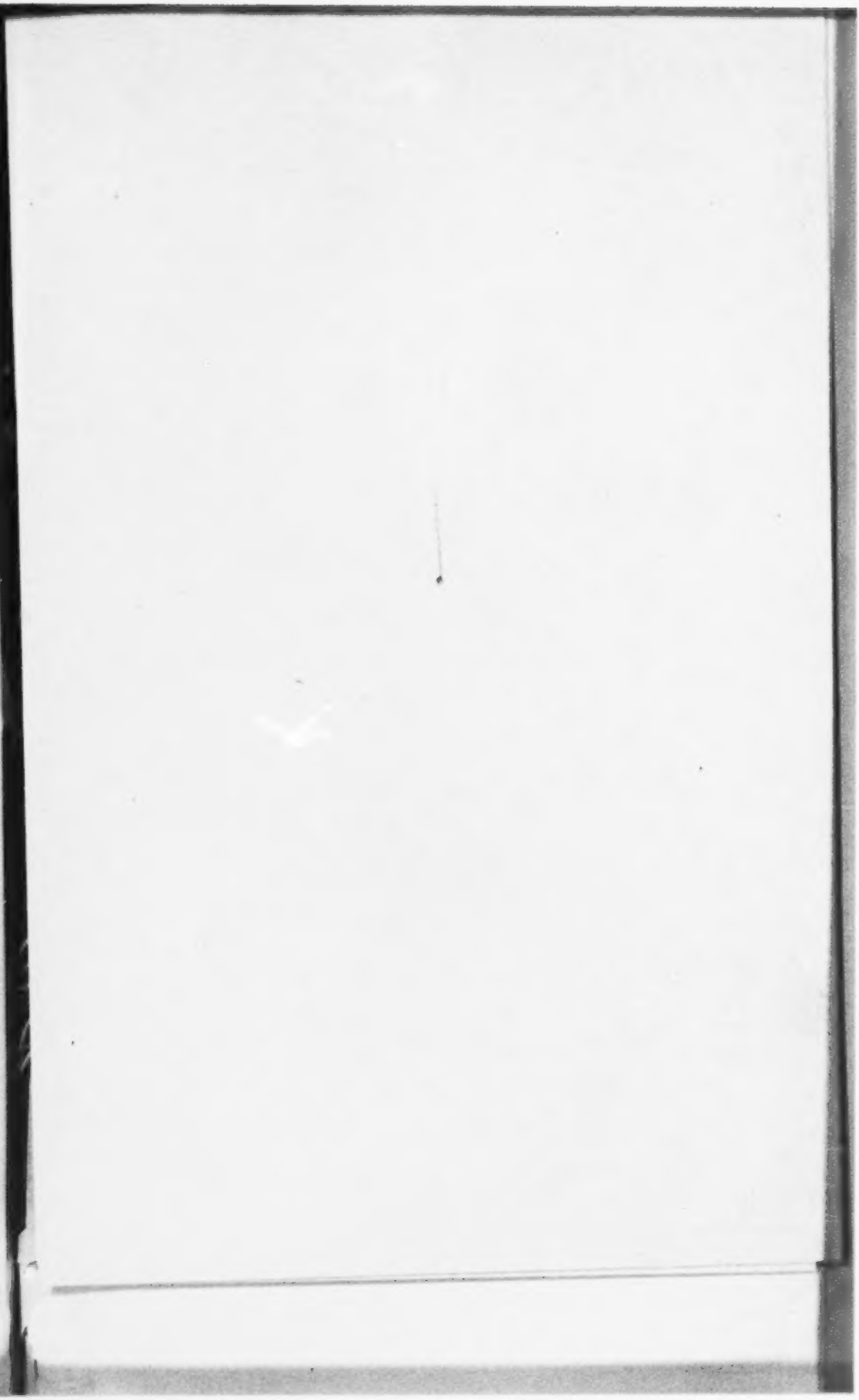
I, Binger Hermann, commissioner of the General Land Office, do hereby certify that the annexed tracing of a plat of Township No. 19 South, Range No. 28 East, Tallahessee Meridian, Florida, approved May 28th, 1889, is a true and literal exemplification of the official plat of the survey thereof, on file in this office.

In testimony whereof I have hereunto subscribed by name, and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of the
General Land Office.

[Seal of the
General Land Office.]
(Revenue stamp.)

Indorsed: Filed in evidence this April 13, 1909, as Defendant's Exhibit No. 14. C. B. Robinson, Special Master. Filed June 3, 1911. E. O. Locke, Clerk.



1209 In the District Court of the United States in and for the Southern District of Florida.

Enrique del Pozo y Marcos et al, Complainants,
vs.
Wilson Cypress Company, Defendant.

It is hereby certified that there was read in evidence at the final hearing of the above entitled cause the following described portions of the files and record in a cause heretofore pending in this court, wherein Felif G. Marcos y Diaz et al were complainants and the said Wilson Cypress Company was defendant, to-wit:

The motion of defendant to dismiss the said suit for want of prosecution, filed the 21st day of March, 1904.

The motion or application of the complainants to extend the time for taking the testimony in said cause, filed the 7th day of December, 1903.

The affidavit of Cecil G. Butt, one of the solicitors of the complainants, in support of said motion to extend said time for taking testimony, filed the 7th day of December, 1903.

The order of the Court denying said motion, extending time of taking testimony, made the 23rd day of February, 1904, and filed the 23rd day of February, 1904.

The order of said Court granting the motion to dismiss and dismissing the said cause for want of prosecution, made the 4th day of April, 1904, and filed the 5th day of April, 1904.

1210 which papers were read in evidence in the herein first above entitled cause and considered as testimony therein.

In witness whereof, I have hereunto set my hand and seal this 2nd day of February, 1912.

[Seal] JAMES W. LOCKE.

Indorsed: # 21 P. I. R. 23—In U. S. District Court, Southern District of Florida. Enrique del Pozo y Marcos et al. vs. Wilson Cypress Company. Certificate of filing in evidence of certain papers. Filed Feb. 3, 1912. E. O. Locke, Clerk.

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FILMING

1211 In U. S. Circuit Court for the Northern District of Florida. In Chancery.

Felix G. Marcos y Diaz et al.
vs.
The Wilson Cypress Company.

Now come the complainants by their solicitors, Shelley and Martin, C. G. Butt and L. G. Starbuck, and made this Honorable Court to extend the time for taking testimony in this cause and for grounds of motion say, that this suit has been under the active management of C. G. Butt and L. G. Starbuck, attorneys and solicitors resident at Orlando, within this jurisdiction, but that they are and have been merely associate counsel, having no direct communication with their clients, and that Shelley and Martin, attorneys and solicitors, resident at Washington, D. C., have had charge of all communication with the clients themselves, all of whom reside in Cuba, and all or most of whom have no knowledge of the English language, that communication with them under the most favorable circumstances is difficult and slow, and that during the past month Mr. J. G. Martin, of the firm of Shelley and Martin, who has had entire charge of the correspondence with clients in Cuba, has been seriously sick, confined to his bed and unable to be in his office, and he being the active counsel in the case has been unable to communicate with the clients or to obtain from them funds with which to prosecute the case, but that funds have now been provided, and they believe that if time is extended to take testimony they will be able to produce the testimony necessary to establish their case herein.

Wherefore complainants respectfully pray that the time be extended four months, as much of the testimony must be taken in Cuba, on commission, and testimony translated in English.

SHELLEY & MARTIN.
C. G. BUTT.
L. G. STARBUCK.
Complainants' Solicitor.

1212 State of Florida,
County of Orange.

Personally appeared before me, C. G. Butt, who being first duly sworn, deposes and says, that he is of counsel for com-

plainant in the foregoing styled cause, and that he has read the foregoing motion, and knows the contents thereof, and that the matters and things therein alleged are true of his own knowledge, except the sickness of Mr. Martin, which he states on information and believes such information and belief being based on letters received from the said firm, Shelley and Martin.

CECIL G. BUTT.

Subscribed and sworn to before him this 5th day of December, A. D. 1903.

[Seal]

L. J. DOLLINS.

My commission expires Dec. 13, 1906.

Indorsed: 177 R. 33 U. S. Circuit Court, Southern District of Florida. F. G. Marcos y Diaz et al. vs. Wilson Cypress Company. Motion for extension of time to take testimony. Filed December 7, 1903. E. O. Locke, Clerk.

1213 In the Circuit Court of the United States, in and for the Southern District of Florida.

Felix G. Marcos y Diaz et al.
vs.
The Wilson Cypress Company.

This cause coming on to be heard upon the motion of the complainant for an extension of time in which to take testimony, and having been fully heard by argument of counsel, now upon consideration thereof, it not appearing to the Court that sufficient cause has been shown to warrant such an extension of time, it is ordered that said motion be, and the same is hereby denied.

JAMES W. LOCKE.
Judge.

Jacksonville, Fla., February 23rd, 1904.

Indorsed: 177 R. 33—United States Circuit Court, Southern District of Florida. Felix G. Marcos y Diaz et al. vs. The Wilson Cypress Company. Order denying motion for extension of time to take testimony. Filed Feb. 23, 1904. E. O. Locke, Clerk.

MOTION TO DISMISS.

1214 In United States Circuit Court, Northern District of Florida. In Chancery.

Felix G. Marcos y Diaz et al.
vs.
The Wilson Cypress Co.

Now comes the complainants by their solicitors and move this Honorable Court to dismiss this cause without prejudice to their rights to bring another action as they may be advised, costs to be paid by complainants.

SHELLEY & MARTIN,
C. G. BUTT,
L. G. STARBUCK,
Complainants' Solicitors.

Indorsed: R. 33—In U. S. Circuit Court, Southern District Fla. F. G. Marcos y Diaz et al. vs. Wilson Cypress Co. Motion to dismiss. Filed March 21st, 1904. E. O. Locke, Clerk.

1215 In the Circuit Court of the United States, in and for the Southern District of Florida.

Felix G. Marcos y Diaz et al.
vs.
Wilson Cypress Company.

This cause coming on to be heard upon the motion of the complainant to dismiss its bill of complaint herein, and the motion of the defendant for a final decree; and having been fully heard and duly considered, it is ordered that said motion to dismiss without prejudice, be granted, and the motion for final judgment denied. JAMES W. LOCKE,
Judge.

Jacksonville, Fla., April 4th, 1904.

Indorsed: 177 R. 33—United States Circuit Court, Southern District of Florida. Felix G. Marcos y Diaz et al. vs. The Wilson Cypress Company. Order dismissing. Filed April 5, 1904. E. O. Locke, Clerk.

1216 United States District Court, Southern District of Florida. In Chancery.

Enrique del Pozo y Marcos, and others, Complainants,
vs. In Equity.
Wilson Cypress Company, a Corporation, Defendant.

I, Eugene O. Locke, clerk of the above entitled Court, do hereby certify that the foregoing and attached pages and part pages of printed and part printed, typewritten and partly typewritten matter numbered from 1 to 1213, inclusive, contain a full and correct transcript and copy of the record, assignments of errors, bill of exceptions and all proceedings in the above entitled cause lately adjudicated in said Court, as the same appear and remain on file and of record in my office as said clerk, at Jacksonville, in said district.

In witness whereof I hereunto set my official signature and affix the seal of said Court, at Jacksonville, in said district, this 5th day of April, A. D. 1912.

EUGENE O. LOCKE,
[Seal] Clerk.

1217 United States Circuit Court of Appeals, Fifth Circuit.

Wilson Cypress Company, Appellant,
vs.
Enrique del Pozo y Marcos et al., Appellees.

To the Honorables, the Judges of the Circuit Court of Appeals of the United States, Fifth Circuit:

Now comes E. O. Locke, clerk of the District Court of the United States for the Southern District of Florida, and states to said Court that in preparing the transcript of record on appeal from said Court, to said Appellate Court, in the above entitled cause, he included two exhibits, which were before said Court on the hearing of said cause, written in the Spanish language, and submitted and considered without translations of the same being filed; said exhibits being the marriage certificate of Maria Garcia Marcos to Augustine Garcia, and the baptismal certificate of Lorenzo Garcia.

That by order and authority of said District Court, the said documents have now been translated into the English language, and said translations have been filed in said lower Court.

Wherefore it is petitioned that in accordance with Rule 15 of said Circuit Court of Appeals, said translations, duly certified and hereto attached, may be permitted to be inserted and printed in the said record.

E. O. LOCKE,
Clerk U. S. District Court,
Southern District of Florida.

Ordered that above mentioned translations be inserted and printed in the record.

DON A. PARDEE,
Circuit Judge.

May 16th, 1912.

[Indorsed:] 2354 In the United States Circuit Court of Appeals, Fifth Circuit. Wilson Cypress Company versus Enrique del Pozo y Marcos. Petition and Order to Insert Translations, and Print Same in Record. U. S. Circuit Court of Appeals. Filed May 17, 1912. Frank H. Mortimer, Clerk.

1218 Presbyter Pedro Arambarri, parish priest of the Church of Termino del Espirituo Santo of Havana, certify: That in book 40 of baptism of whites, folio 36, number 76, the following is recorded:

Saturday, September 14th, in the year 1850, I, D. Ant'o Abad Facenda, B'r of Laws, and priest ordained by S. M. with the healing of souls, in the Parish Church del Espiritu Santo of Havana, I baptized and anointed a babe that was born on the 10th day of last August, legitimate son of D. Genaro Garcia and D'd Adela Pichardo, natives of this city and neighbors of the parish. Paternal grandparents, D. Agustin and D'd Altegracia Marcos; maternals, D. Esteban and D'a Dolores Armenteros; and on said babe I performed the sacred rites and prayers and gave him the name of Lorenoz.

His sponsors were D. Pedro Garcia and D'a Dolores Morajon. I advised them as to their spiritual relationship. And I sign

ANT'O ABAD FACENDA.

This is like the original. Habana, May the twenty-fourth of 1900.

[Seal of the Parish] PEDRO ARAMBARRI.

I, E. O. Locke, Clerk U. S. District Court, Southern District of Florida, hereby certify that the above is a true copy of the translation of the baptismal certificate in the Spanish language of Lorenoz Garcia, which is filed as an exhibit in the case of Enrique del Pozo y Marcos et al. vs. Wilson Cypress Company, which translation has been made by order of and under authority of the said District Court, to complete the record which has been sent to the U. S. Circuit Court of Appeals, Fifth Circuit, at New Orleans, La.

Witness my hand officially, and the seal of said Court, this May 15th, A. D. 1912. E. O. LOCKE,

[Seal] Clerk.

1219 Dr. Manuel J. Dobal, presbyter parochial curate of the Church of Termino de Jesus Maria y Jose of this city and diocese, certify: That in Book 2, of matrimonies of whites, at folio 108, record number 591, is found the following: In the Auxiliary Church of Jesus Maria y Jose, outside the walls of Habana, on the 17th of November of 1825, having performed all the necessary judicial requirements in the presence of Don Jose Martinez, notary of matrimony, and proclaimed for three days the banns of matrimony, no impediment resulting therefrom, I, Dr. Jose Miguel Suarez, permanent curate of said church, married and had them keep the vigil, as commanded by the Holy Church, Don Agustin Garcia, native of this parish, legitmate son of Don Pedro Garcia and Dona Micaela Diaz, widower of Dona Irene Garzino, to Dona Maria Garcia Marcos, native of Saint Augustine, Florida, legitimate daughter of Don Miguel Marcos and Teresa Rodriguez, residents of this jurisdiction, single. Having asked both contracting parties, was answered that it was by mutual consent; being present Don Manuel Palma, under order, and the attendants, Don Jose del Pozo and Dona Teresa Rodriguez. They confessed and communed and I signed

DON JOSE MIGUEL SUAREZ RODRIGUEZ.

This is copy of the original. Habana, 21 of May, 1909.

DR. MANUEL J. DOBAL.

I, E. O. Locke, clerk U. S. District Court, Southern District of Florida, hereby certify that above is a true copy of the translation from the Spanish language of marriage certificate of Maria Garcia Marcos to Augustin Garcia, Exhibit No. 11, in case Enrique del Pozo y Marcos et al. vs. Wilson Cypress Co., which translation has been made by order of and under authority of said District Court, to complete the record which has been sent to the U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, La.

Witness my hand officially and the seal of said Court, May 15, 1912.

E. O. LOCKE,
Clerk.

[Seal]

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument in Part, and Continuance.

Extract from the Minutes of December 12th, 1912.

No. 2354.

WILSON CYPRESS COMPANY
vs.
ENRIQUE DEL POZO Y MARCOS et al.

On this day this cause was called, and after argument by J. C. Cooper, Esq., for Appellant, and Wm. W. Dewhurst, Esq., for Appellees, was continued until tomorrow at eleven o'clock a. m., for further hearing.

Continued Argument and Submission.

Extract from the Minutes of December 13th, 1912.

No. 2354.

WILSON CYPRESS COMPANY
vs.
ENRIQUE DEL POZO Y MARCOS et al.

On this day this cause was called for further hearing, and after argument by Jos. H. Jones, Esq., for Appellees, and J. C. Cooper, Esq., for Appellant, was submitted to the Court.

Opinion of the Court.

Filed February 4th, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY
vs.
ENRIQUE DEL POZO Y MARCOS et al.

Appeal from the United States District Court for the Southern District of Florida.

Before Pardee and Shelby, Circuit Judges, and Grubb, District Judge.

By the COURT:

The lands in controversy were not segregated from the public domain and the title thereto remained in the United States until the

issuance of the patent, therefore they were not taxable by the State of Florida at the several times they were listed for taxes and sold for non-payment thereof.

In the other questions involved in the case we find no reversible error. The decree appealed from is affirmed.

Judgment.

Extract from the Minutes of February 4th, 1913.

No. 2354.

WILSON CYPRESS COMPANY
vs.
ENRIQUE DEL POZO Y MARCOS et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the Appellant, Wilson Cypress Company, and the surety on the appeal bond herein, Regal Indemnity Company, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said District Court.

Petition for Appeal.

Filed February 28th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Petition of Appeal to the Supreme Court of the United States from the Circuit Court of Appeals for the Fifth Circuit.

The above mentioned appellant, Wilson Cypress Company, a corporation under the laws of Florida, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that judgment therein has been rendered on the 4th day of February, 1913, affirming the decree of the District Court of the United States for the Southern District of Florida, and that the matter in controversy in said suit exceeds in

value One Thousand Dollars ($1,000.), besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant prays that an appeal be allowed it in the above entitled cause, directing the clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellant may be reviewed, and, if error be found, corrected, according to the laws and customs of the United States.

(Signed) J. C. COOPER,
(Signed) E. E. HASKELL,
Solicitors and of Counsel for Appellant.

February 28th, 1913.

Assignment of Errors.

Filed February 28th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Assignments of Error.

The appellant in the above entitled cause, in connection with its petition for appeal herein, presents and files therewith its assignment of errors as to the matters and things in which it says the decree of the said United States Circuit Court of Appeals for the Fifth Circuit, dated the 4th day of February, 1913, is erroneous, to-wit:

(I.)

That the said United States Circuit Court of Appeals erred in making its order herein, dated February 4th, 1913, affirming the decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, herein.

(II.)

That the said United States Circuit Court of Appeals erred in holding that the lands in controversy were not segregated from the public domain and that the title thereto remained in the United States until the issuance of patent, and that, therefore, they were not taxable by the State of Florida at the several times they were listed for taxes and sold for nonpayment thereof.

(III.)

That the said United States Circuit Court of Appeals erred in further holding and determining that in the other questions involved in the case the said United States Circuit Court of Appeals found there was no reversible error in the said final decree of the United States District Court for the Southern District of Florida in the said case appealed from, and in affirming said decree.

(IV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the appellees, Felix Genaro Marcos, Ernesto Nunez del Pozo, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Louis Garcia y Pechardo, Ricardo Garcia Ochandrina (or Ochandarena), Gertrudis Garcia Ochandrina (or Ochandarena) and Maria Teresa Ochandrina (or Ochandarena) were found to be descendants and heirs at law of Teresa Rodriguez, as mentioned in said decree, and entitled to an undivided interest in and to the lands therein described.

(V.)

The said United States Circuit Court of Appeals erred in affirming the said decree of the said District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in ordering, adjudging and decreeing that the said appellees, Felix Genaro Marcos, Ernesto Nunez del Pozo, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Louis Garcia y Pechardo, Ricardo Garcia Ochandrina (or Ochandarena), Gertrudis Garcia Ochandrina (or Ochandarena) and Maria Teresa Ochandrina (or Ochandarena) for themselves and as representatives of all persons claiming title to the lands described therein through the said Teresa Rodriguez, her heirs and legal representatives, are and were entitled to maintain the bill in said cause to remove cloud upon the lands described in said decree of said District Court of the United States for the Southern District of Florida.

(VI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January 1912, to-wit, in ordering, adjudging and decreeing that the tax deed, dated the 5th of July, A. D. 1852, to that portion of the said lands described in the decree designated as Section 37 of Township 19, South of Range 29, East, for the taxes recited in the said deed to be due the State of Florida on said lands for the years 1845 to and including the year 1851, to one John Stark, which said deed has been copied into the public records of Orange County, Florida, in Deed Book "D", pages 277 and 278, on June 27, A. D. 1885, is null and void and of no

effect, and are by said decree set aside and declared absolutely void as a conveyance of said lands therein described, or any part thereof, and is a cloud upon the title of the said Teresa Rodriguez, her legal representatives and heirs at law.

(VII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the tax deed dated the 23d day of April, A. D. 1872, issued by one Robert C. Parker, tax collector of Orange County, Florida, to one William Mills for that portion of the lands described in said decree designated as Sections 12, 13, 14, 15, 16, 9, 10, 11 and part of Sections 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 in Township 19, South, Range 28 East, for the taxes recited in said deed to be due the County of Orange and State of Florida, for the years 1867-1868 and 1869, which deed is recorded in the public records of Orange County, Florida, in Miscellaneous Records "A", page 10, on October 14th, A. D. 1872.

(VIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the said deeds therein described and above mentioned, to-wit, one to John Stark, dated the 5th of July, 1852, and the one to William Mills above mentioned, dated the said 23d of April, 1872, both as above described, having been based upon assessments for said property prior to the issuance of the patent to said lands by the United States on the 26th day of June, A. D. 1895, and while the validity of said Grant was denied by the United States through its duly organized land Department, are and each of said tax deeds is absolutely null and void and of no effect, and are by said decree set aside and declared absolutely void as a conveyance of said lands therein described or any part thereof, and is a cloud upon the title of the said Teresa Rodriguez, her legal representatives and heirs at law.

(IX.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the certain deed from Edwyn Sandys Dawes and George Augustus Thompson, as trustees of the Florida Land and Colonization Company, Limited, to the Florida Land and Colonization Company, Limited, of England, a corporation under the Corporation Acts of 1862 to 1898, dated the 2nd day of December, A. D. 1899, recorded in the public records of Lake County, Florida, in Deed Book #35, page 541, et seq. to the

following lands: All those certain pieces, tracts or parcels of land situated and lying in Lake County, State of Florida, and being in the S. ½ of Sections 1, 2, 3, 4 and 5, and in the E. ½ of Sections 8 and 17, and in the N. ½ of Sections 20, 21, 22, 23 and 24, and all of Sections 9, 10, 11, 12, 13, 14, 15 and 16, known as the Theresa Rodriguez or Powell Grant all being in Township 19, South of Range 28, East, except the N. ½ of the N. W. ¼ of Sec. 9, and except sixty acres in Section 9, between the Mill road and center line running north and south in said section, deeded to Smith & Clifford, containing 5366 acres of land, more or less, is by said decree set aside and declared absolutely null and void and of no effect as a conveyance of the lands therein described or any part thereof, as against the said appellees last therein mentioned and all persons claiming under them or any of them and as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, as a cloud upon their title to said lands patented to Teresa Rodriguez, her heirs, assigns and legal representatives as aforesaid.

(X.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that that certain deed from the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1862 to 1898 of Great Britain to the Wilson Cypress Company, a corporation, under and by virtue of the laws of the State of Florida, the appellant herein, dated the 3d day of May, A. D. 1900, of that certain tract of land situated in Lake County, Florida, and more particularly described as Section 37, Township 19, South of Range 28 East, and Section 41 of Township 19 of Range 29 East, and known as the Theresa Rodriguez Grant (sometimes called the Powell or Sanford Grant) excepting therefrom two pieces of land heretofore sold and described as follows: N. ½ of N. W. ¼ of Section 9, and sixty acres deeded to Smith & Clifford in Section 9, between the Mill road and the center line running north and south of said section, both tracts being in Township 19, South of Range 28 East, said land containing in all about 5366 acres of land and water, more or less, said deed being recorded in Deed Book No. 35, pages 593 to 595 of the Public Records of Lake County, Florida, is by said decree set aside and declared absolutely null and void and of no effect as a conveyance of the lands therein described, or any part thereof, as against the said appellees last therein mentioned, and all persons claiming under them, or any of them and as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, as a cloud upon their title to said lands patented to Teresa Rodriguez, her heirs, assigns and legal representatives as aforesaid.

(XI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for

the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the said deed from Edwin Sandys Dawes and George Augustus Thompson, as trustees of the Florida Land and Colonization Company, Limited, to the Florida Land and Colonization Company, Limited, of England, a corporation under the Corporation Acts of 1862 to 1898, dated the 2nd day of December, A. D. 1899, recorded in the public records of Lake County, Florida, in Deed Book No. 35, page 541, et seq. be set aside and declared absolutely null and void as a conveyance of said lands as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, than the appellees found and adjudged by name to be descendants and heirs at law of Teresa Rodriguez in said decree, and as a cloud upon their title to said lands mentioned in said decree.

(XII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the said deed from the Florida Land and Colonization Company, Limited, a corporation under the Companies Acts 1862 to 1898 of Great Britain, to the Wilson Cypress Company, a corporation existing under and by virtue of the laws of the State of Florida, dated the 3d day of May, A. D. 1900, mentioned in said decree, be set aside and declared absolutely null and void as a conveyance of said lands as against all others, the legal representatives of said Teresa Rodriguez, parties to this suit, than the appellees found and adjudged by name to be descendants and heirs at law of Teresa Rodriguez in said decree, and as a cloud upon their title to said lands mentioned in said decree.

(XIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the appellant, Wilson Cypress Company, has no estate, right, title or interest in and to said tract of land described in said decree, to-wit, as patented to the said Teresa Rodriguez and her heirs and legal representatives, or any part thereof, under and by virtue of the said several deeds attempted to be cancelled in and by said decree.

(XIV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the appellant, Wilson Cypress Company, its officers and agents, and all persons claiming by, through or under said appellant, a corporation, since the filing of the bill of complaint, are enjoined from setting

up or claiming any title under and by virtue of said deeds decreed to be cancelled in and by said decree to its said lands mentioned therein.

(XV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in ordering, adjudging and decreeing that the said appellant, Wilson Cypress Company, its officers and agents, and all persons claiming by, through or under it since the filing of the bill herein should be enjoined from entering upon, taking or holding possession of the lands therein mentioned or occupying the same or any part thereof, or cutting or removing any wood or lumber therefrom under the said deeds mentioned in said decree and decreed therein to be cancelled.

(XVI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in enjoining and restraining the Wilson Cypress Company from setting up or claiming any right or interest in said lands by virtue of any occupancy of any part thereof under any of said deeds as stated in said decree.

(XVII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in holding and determining that the said lands therein described were not subject to taxation, and were not legally assessed and sold for the non-payment of taxes for the years 1845 to 1851, inclusive, as therein mentioned in said decree.

(XVIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in holding and determining that the said lands therein described were not subject to taxation, and were not legally sold for the non-payment of taxes for the years 1867-1868, 1869, inclusive, as therein mentioned in said decree.

(XIX.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th of January, 1912, to-wit, in holding and determining that the said Teresa Rodriguez Grant was not a confirmed or complete Grant prior to the Act of Congress of 1828.

(XX.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the said Grant was never considered as having been confirmed or binding upon the United States prior to the issuance of the said patent.

(XXI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the survey of said Grant was not approved until June 18th, 1894.

(XXII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that until the issuing of patents to the said lands the United States had held these lands as its property.

(XXIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that prior to the issue of the patent, Teresa Rodriguez, the grantee, and her representatives, could not have legally and justly reduced the said land to possession, taken off the timber or used it as their own in any way.

(XXIV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that prior to the issue of the patent, no claim of occupation or possession under tax deeds issued during that period would be valid.

(XXV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining in said suit that persons holding tax deeds could not rely upon the statutes of limitations for title by adverse possession to said lands.

(XXVI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that appellees and their ancestors were not barred by laches in the said cause, and in not protecting their interest in the said property.

(XXVII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the said appellees and the said Teresa Rodriguez and her representatives have not been guilty of willful or unreasonable lack of diligence or effort to maintain their rights.

(XXVIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the appellant had notice of the existence of the efforts of the appellees to obtain said patent before it was issued and of the issuance of the patent prior to their purchase of this property.

(XXIX.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the holders of the tax titles mentioned in said cause had ample notice of the application for the confirmation of the Grant and must be held to have assumed the risk of its confirmation.

(XXX.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the alleged Church Records introduced in evidence by appellees could be received in evidence to establish the pedigree of appellees and the rights of appellees.

(XXXI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the existence of said Church Records has been fully proven, and that they establish a

prima facie proof of the existence of certain of the appellees as the heirs of the grantee.

(XXXII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the equities in this suit were with the appellees, and that this suit in equity could be maintained and that apellees did not have a plain and adequate remedy at law.

(XXXIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the possession of the appellant, shown by the evidence, was not such as to prevent appellees from maintaining this suit in equity.

(XXXIV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, ——, to-wit, in holding and determining that the appellant in attempting to prove title by adverse possession had the burden of proof to prove that the house occupied by its agent was actually on the land.

(XXXV.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining in the said suit that under the statutes of Florida the occupancy as shown by appellant was not sufficient to justify the claim of adverse possession so as to permit the statutes of limitation in this case.

(XXXVI.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that the suit should not be dismissed for want of parties.

(XXXVII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, to-wit, in holding and determining that under the doctrine of

representation the appellees, who had proved their pedigree, represented all of the heirs of Teresa Rodriguez in maintaining this bill, and that the decree herein should be for the benefit of all such heirs at law of Teresa Rodriguez, although not made parties complainant, or the pedigree of some of the heirs not having been proven.

(XXXVIII.)

That the said United States Circuit Court of Appeals erred in affirming said decree of the District Court of the United States for the Southern District of Florida, dated the 13th day of January, 1912, in all particulars, and in not reversing the same.

February 28th, 1913.
(Signed) J. C. COOPER,
(Signed) E. E. HASKELL,
Solicitors and of Counsel for Wilson Cypress Company, a Corporation, Defendant and Appellant.

Order Allowing Appeal.

Filed February 28th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Order Allowing Appeal.

It is hereby ordered That an appeal in the above entitled case to the Supreme Court of the United States be, and is hereby, allowed, as prayed; and that it operate as a supersedeas; and that the decree of the District Court of the United States for the Southern District of Florida herein, dated the 13th day of January, 1912, save and except the provision in said decree and the portion thereof enjoining the said defendant, Wilson Cypress Company, its officers and agents, and all persons claiming by, through or under said defendant, a corporation, since the filing of the bill of complaint herein, from cutting or removing any wood or lumber from the said lands involved in said suit, described in the said patent therein mentioned from the United States to Theresa Rodriguez, her heirs and legal representatives, be hereby superseded pending said appeal, and until the same is finally heard and determined upon the appellant, Wilson Cypress Company, a corporation under the laws of Florida, filing, in addition to the appeal bond herein, another good and sufficient bond herein in the sum of five thousand ($5000) Dollars,

conditioned as required by law, and that if the said Wilson Cypress Company do prosecute the same to effect and if it fails to make its appeal good, shall pay and answer all damages, costs, charges and interest in the said cause, then the said obligation to be void.

Feb'y 28th, 1913.

(Signed) DON A. PARDEE.
United States Circuit Judge, Fifth Circuit.

Bond on Appeal.

Filed March 10, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Know all men by these presents, That we, Wilson Cypress Company, a corporation under the laws of the State of Florida, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Md., as surety, are held and firmly bound unto Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Cristina del Pozo y Marcos, by her husband, Alejandro Nunez Villavicencio y Alvarez, her next friend, Maria Piler Marcos y Pozo, by her husband, Ysidro Martin Martinez y Sanchez, her next friend; Felix Genaro Marcos y Diaz, Adelida Garcia y Pechardo, Widow of Urbana Codina, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Carmen Garcia y Pechardo by Ysidro Zertucha, her husband and next friend, Rafaela Garcia y Pechardo by Maximo Zertucha, her husband and next friend, Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvassess, otherwise called Alvarez, Alfonso Garcia y Pechardo, Ricardo Garcia Alvassess; Margarita Alvassess de Garcia, widow, Ricardo Alvassess Garcia, Alfonso Alvassess Garcia, Miguel Alvassess Garcia; Luis Alvassess Garcia; Maria Teresa Garcia y Ochandarena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena, Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez, Amelia Pozo y Nunez by Saladrigas, her husband and next friend, Alfredo Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Fabre, Concepcion Pozo y Fabre by — Reyes, her husband and next friend, in the sum of Five Thousand Dollars ($5,000.), for the payment of which well and truly to be made we bind ourselves and each of us and our successors, heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 4th day of March, 1913.

Whereas, the Wilson Cypress Company, a corporation, has prosecuted an appeal to the Supreme Court of the United States to reverse

the order and decree of the said United States Circuit Court of Appeals, dated the 4th day of February, 1913, in the above entitled cause affirming that certain order and decree of the United States District Court for the Southern District of Florida in the said cause, dated the 13th of January, 1912;

Now, therefore, the condition of this obligation is such that if the above named Wilson Cypress Company should prosecute said appeal to effect, and if it fails to make its appeal good, shall answer all damages and costs, then this obligation to be void, otherwise the same shall remain in full force and effect.

In witness whereof, the said obligors have executed the foregoing obligation and bond by their respective officers, duly authorized thereunto, and have caused their respective corporate seals to be thereunto affixed, and the said obligation and bond to be attested by their proper officers thereunto duly authorized this 4th day of March, 1913.

(Signed) WILSON CYPRESS COMPANY,
(Signed) By ASAD E. WILSON,
Vice-President, Executing Foregoing Bond in the Absence of the President of said Company.

Attested with Corporate seal of Wilson Cypress Company.

(Signed) By F. H. WILSON,
As Secretary and Custodian of the Seal of said Company. [SEAL.]

(Signed) THE UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MD.,
(Signed) By T. B. McEWILL,
Attorney. [SEAL.]

Bond accepted.
Surety approved.
(Signed) DON A. PARDEE,
Circuit Judge.

Præcipe Directing Clerk to Prepare Transcript.

Filed March 10th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

To the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit:

It appearing that the appeal from the decree of the United States District Court for the Southern District of Florida to said United

States Circuit Court of Appeals for the Fifth Circuit in the above entitled cause has been heard and submitted in said above last named court, and a judgment and decree entered therein affirming the decree of the said District Court in said cause, and that the said appeal was submitted, heard and determined upon a printed transcript of the record containing the testimony therein, and that said cause was submitted and heard in said Court prior to February 1st, 1913, and that there are now twenty-five copies of said printed record in your custody in addition to those filed in said Court, and which printed records contain all the testimony in said cause and the entire record except the original papers filed in and the proceedings had in the said United States Circuit Court of Appeals in said cause, you are, therefore, hereby requested and directed to use one of said printed copies of said record in the preparation and as part of the transcript of the record in said cause on said appeal to the Supreme Court of the United States, and to transmit the said printed copies of the said record to be used in the preparation and as part of the printed record in the said Supreme Court of the United States in said cause, and that there shall be included in the said transcript transmitted by you to said Supreme Court each and every portion of the said printed record now on file in your office, and, in addition, copies of all papers, files and proceedings filed and of record in said cause in your office.

(Signed) JOHN C. COOPER,
(Signed) E. E. HASKELL,
Appellant's Solicitors.

Order Directing Clerk in Preparing Transcript.

Extract from the Minutes of March 10th, 1913.

No. 2354.

WILSON CYPRESS COMPANY, a Corporation, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

This cause coming on to be heard on the application of the Wilson Cypress Company, appellant in above entitled cause, for directions to the Clerk of this Court in making up the transcript of the record on the appeal in said cause from this Court to the Supreme Court of the United States;

And it appearing that the appeal herein from the decree of the United States District Court for the Southern District of Florida to this Court has heretofore been heard and submitted in this Court, and a judgment and decree herein affirming the decree of the said District Court in said cause has been entered, and the said appeal from said District Court to this Court was submitted, heard and determined upon a printed transcript of the record containing the testimony therein, to-wit, prior to February 1st, 1913, and that there

are now twenty-five copies of the printed record remaining in the custody of the Clerk of this Court in addition to those filed herein, and that the said printed records contain all the testimony in the cause and the entire record except the original papers filed and proceedings had in this Court.

It is ordered that the Clerk of this Court use one of said printed copies of said record in the preparation of and as part of the transcript of the record in said cause on said appeal to the Supreme Court of the United States, and that he transmit to the Clerk of said Supreme Court the said additional printed copies of said record now in his custody, to be used in and as a part of the printed records in said Supreme Court of the United States on said appeal, and that he shall include in the said transcript of said record so transmitted by him to said Supreme Court all of the testimony as the same now appears in the record herein, and each and every portion of the printed record now on file in his said office, and, in addition, copies of all papers filed and proceedings now on file or of record in said cause in his said office.

Motion for Order Directing Clerk to Transmit Original Exhibits.

Filed March 18th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

Now comes the appellant in the above entitled cause and moves the Court to enter an order directing the Clerk of said Court to send to the Supreme Court of the United States, on Appeal from decree of this Court to the said Supreme Court, the original exhibits, numbered one to nineteen, of the appellees, heretofore transmitted to this Court from the United States District Court for the Southern District of Florida, and considered on the appeal herein.

March 14th, 1913.

(Signed) JOHN C. COOPER & SON,
Solicitors and of Counsel for Appellant,
Wilson Cypress Company.

Order Directing Clerk to Transmit Exhibits.

Filed March 18th, 1913.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 2354.

WILSON CYPRESS COMPANY, Appellant,
vs.
ENRIQUE DEL POZO Y MARCOS et al., Appellees.

It is ordered that the Clerk of this Court do send to the Supreme Court of the United States the original exhibits, one to nineteen, of appellees, in said cause, which originals were sent by the Clerk of the United States District Court for the Southern District of Florida to this Court, and considered by this Court on appeal in said cause herein.

March 18, 1913.

(Signed) DON A. PARDEE, *Judge.*

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 1039 to 1084 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2354, wherein Wilson Cypress Company is appellant, and Enrique del Pozo y Marcos, et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 1038 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

I further certify that the Exhibits numbered from 1 to 19, inclusive, forwarded to this Court in the original, are transmitted in the original to the Supreme Court of the United States, in virtue of the order copied at page 1083 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City

of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of March, A. D. 1913.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Cristina del Pozo y Marcos, by her husband, Alejandro Nunez Villavicencio y Alvarez, her next friend; Maria Piler Marcos y Pozo, by her husband, Ysidro Martin Martinez y Sanchez, her next friend; Felix Genaro Marcos y Diaz, Adelida Garcia y Pechardo, widow of Urbana Codina Esteban Garcia y Pechardo; Lorenzo Garcia y Pechardo, Carmen Garcia y Pechardo, by Ysidro Zertucha, her husband and next friend; Rafaela Garcia y Pechardo, by Maximo Zertucha, her husband and next friend; Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvasses, otherwise called Alvarez; Alfonso Garcia y Pechardo, Ricardo Garcia Alvasses, Margarita Alvasses de Garcia, widow; Ricardo Alvasses Garcia, Alfonso Alvasses Garcia, Miguel Alvasses Garcia, Luis Alvasses Garcia, Maria Teresa Garcia y Ochandarena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena, Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez, Amelia Pozo y Nunez, by — Saladrigas, her husband and next friend; Alfredo Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Fabre, Concepcion Pozo y Fabre, by — Reyes, her husband and next friend, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to an appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the Wilson Cypress Company, a corporation, is appellant, and Enrique del Pozo y Marcos, Ladislao del Pozo y Marcos, Rosa del Pozo y Marcos, Cristina del Pozo y Marcos, by her husband, Alejandro Nunez Villavicencio y Alvarez, her next friend, Maria Piler Marcos y Pozo, by her husband, Ysidro Martin Martinez y Sanchez, her next friend, Felix Genaro Marcos y Diaz, Adelida Garcia y Pechardo, widow of Urbana Codina, Esteban Garcia y Pechardo, Lorenzo Garcia y Pechardo, Carmen Garcia y Pechardo by Ysidro Zertucha, her husband and next friend, Rafaela Garcia y Pechardo by Maximo Zertucha, her husband and next friend, Luis Garcia y Pechardo, Fausto Garcia y Pechardo, Luis Garcia Alvasses, otherwise called Alvarez, Alfonso Garcia y Pechardo, Ricardo Garcia Alvasses; Margarita Alvasses de Garcia, widow, Ricardo Alvasses Garcia, Alfonso Alvasses Garcia,

Miguel Alvasses Garcia, Luis Alvasses Garcia; Maria Teresa Garcia y Ochandarena, Gertrudes Garcia y Ochandarena, Ricardo Garcia y Ochandarena; Juan Batista Diaz Garcia y Hernandez, Rafael Diaz Garcia y Hernandez, Flora Diaz Garcia y Hernandez; Amelia Pozo y Nunez by — Saladrigas, her husband and next friend, Alfredo Pozo y Nunez, Ernesto Pozo y Nunez, Roso Pozo y Fabre, Rigla Pozo y Fabre, Concepcion Pozo y Fabre by — Reyes, her husband and next friend, are appellees to show cause, if any there be, why the order and decree rendered against the said Wilson Cypress Company, a corporation, appellant, and in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 28th day of February, in the year of our Lord one thousand nine hundred and thirteen.

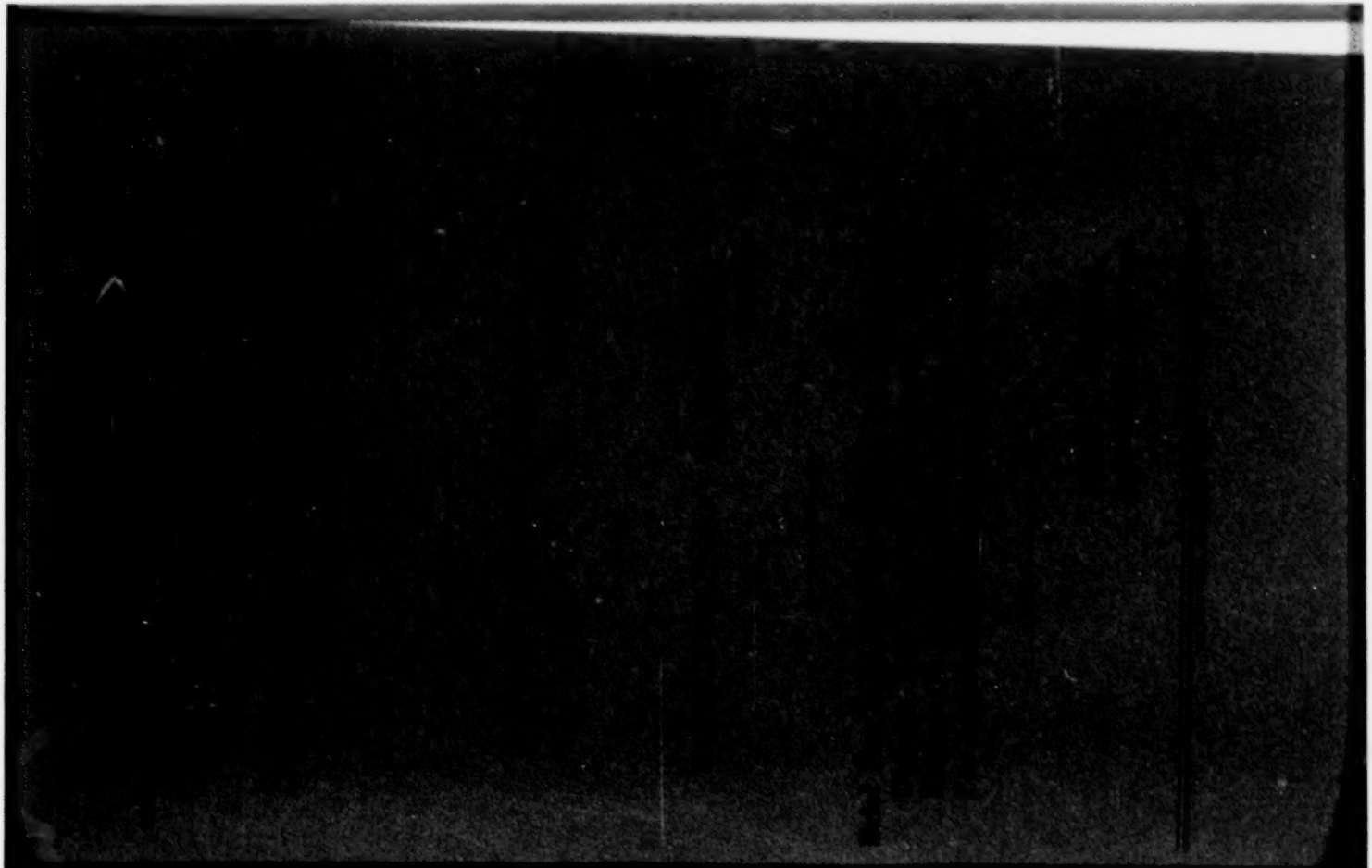
DON A. PARDEE,
United States Circuit Judge.

[Endorsed:] No. 2354. United States Circuit Court of Appeals, Fifth Circuit. Wilson Cypress Company, a corporation, Appellant, vs. Enrique del Pozo y Marcos, et als., Appellees. Citation. March 3—Rec'd. Jacksonville, Fla. Marshal's No. B. 1764-3. Filed Mar. 10 1913. Frank H. Mortimer, Clerk.

Received the within Citation the Third day of March, 1913, in City of Jacksonville, Southern District of Florida, and served the same on the 5th day of March, 1913, in the City of St. Augustine in the Southern District of State of Florida by delivering a true copy thereof to W. W. Dewhurst, Esquire, one of the solicitors of record of the within named appellees, and at the same time showing him this original.

JOHN F. HARR,
U. S. Marshal,
By L. R. O'STEEN,
Deputy.

Endorsed on cover: File No. 23,605. U. S. Circuit Court Appeals, 5th Circuit. Term No. 1030. Wilson Cypress Company, appellant, vs. Enrique del Pozo y Marcos et al. Filed March 31st, 1913. File No. 23,605.



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In the Supreme Court of the United States

WILSON CYPRESS COMPANY, *Appellant*,		No. 135,
AGAINST		October Term,
ENRIQUE DEL POZO Y MARCOS *et al.*, *Appellees.*		1914.

BRIEF FOR APPELLANT ON MOTION OF APPELLEES TO DISMISS FOR WANT OF JURISDICTION, AND ON MOTION OF APPELLEES TO AFFIRM, AND BRIEF FOR APPELLANT ON FINAL HEARING ON THE MERITS.

STATEMENT

The appellees have filed in the above cause a motion to dismiss the appeal taken in the above stated cause from the decree of the United States Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States, on the ground that the said Supreme Court is without jurisdiction to hear and determine said appeal.

This motion was heard at the October Term, 1913, and the decision upon it was continued to the argument on the merits of the cause.

The appellees have at this time filed a motion returnable to the 19th of October, 1914, to affirm the decree of the United States Circuit Court of Appeals for the Fifth

Circuit on the grounds that it is obviously correct, that the appeal is taken for delay only, and that the questions upon which the decision of the cause rests are so frivolous as not to need further argument.

This brief is now filed and submitted by Appellant as a reply to the motion of Appellees to dismiss for want of jurisdiction, as a reply to the motion of Appellees to affirm and as the Appellant's principal brief on the merits at the final hearing.

This appeal was taken and allowed from the decree of the United States Circuit Court of Appeals for the Fifth Circuit, on the grounds that said Circuit Court of Appeals had not final jurisdiction in the cause and that the decree of that Court is not made final under the laws of the United States.

Under Section 241 of the Judicial Code, an appeal of right exists in any case in which the judgment or decree of the Circuit Court of Appeals is not made final. Section 128 of the Judicial Code provides that the judgments and decrees of the circuit courts of appeal shall be final in all cases in which the jurisdiction is dependent *entirely* upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states. The case made by the bill of complaint of the appellees in the District Court in this cause presented several Federal questions for determination by that Court. The title claimed and set up by the appellees as complainants in said bill arose through the construction contended for by appellees in that bill of a treaty between the United States and Spain and certain laws of the United States, some of which were enacted to carry into effect the treaty, and others in reference to public lands of the United States. The appellees' claim for the relief prayed in the bill involved and required the construction of this treaty and these laws of the United States.

Subdivision 4 of Rule 6 of this Court provides for submitting motions to dismiss on briefs, and if the Court desires further argument on that subject, it will be ordered in connection with the hearing on the merits.

Subdivision 5 of Rule 6, under which this motion to affirm is made, provides as follows:

"The Court in any pending cause will receive a motion to affirm on the ground that it is manifest that the writ or appeal was taken for delay only, or that the questions on which the decision of the cause depends are so frivolous as not to need further argument. The same procedure shall apply to and control such motions as is provided for in cases of motions to dismiss under paragraph 4 of this Rule."

Subdivision 6 of Rule 6 of this Court provides that "although the Court upon consideration of the motion to dismiss or a motion to affirm may refuse to grant the motion, it may nevertheless, if the conclusion is arrived at that the cause is of such character as not to justify extended argument, order the cause transferred for hearing to the Summary Docket. The hearing of the causes on such docket will be expedited, the court providing from time to time for such speedy disposition of the docket as the *regular order of business* may permit, and on the hearing of such causes one-half hour will be allowed each side for oral argument."

This case is No. 135 on the Docket of the October Term, 1914, and, necessarily, will be reached for argument on the merits in the early part of this term.

The transcript of the record having been filed in this cause on March 31st, 1913, and the case docketed as No. 1030 of the October term, 1912, and the appellees having made a motion to dismiss for want of jurisdiction at the October term of 1913, which motion involved at least a part of the matters now discussed on the motion to affirm, and the motion to dismiss for want of jurisdiction, by order of this Court having been continued until the argument on the merits, the Court will not now permit the appellees to be heard on a motion to affirm. The effect of permitting the filing of the motion to affirm at this time and for a hearing on it separate from the final hearing on the merits will be the argument and hearing of this

cause three times in this Court, and require the consideration of three sets of briefs or arguments.

The briefs filed by appellees for motion to dismiss for want of jurisdiction and on the motion to affirm plainly show an effort merely to have the case heard upon the merits out of its order on the docket and in advance of other cases. We therefore submit that this motion is not properly filed at this time, and if it is allowed to be filed now, it should be continued to the hearing on the merits on the regular calendar, exactly as the motion to dismiss was continued.

The provisions of Subdivision 6 of Rule 6 indicate that although the Court may transfer the cause for hearing to a summary docket upon consideration of a motion to dismiss or a motion to affirm, the Court will not permit even the consideration of such summary docket to interfere with the regular order of business. It is therefore apparent, considering Subdivisions 4, 5 and 6 of Rule 6 together, that the intention of those rules is to provide for taking up motions to dismiss or motions to affirm only where a long delay must occur before the case can be heard on the merits on the regular docket.

It being apparent from what has already been stated above that the appellees have delayed making this motion nearly eighteen months since the record was filed and until only within probably about two months of the reaching of the cause for final hearing on the regular docket, we submit that the motion to affirm ought not now to be considered.

THE QUESTIONS INVOLVED IN THE CASE, AS SHOWN BY THE BRIEFS FILED BY APPELLEES THEMSELVES, ESTABLISH THAT THE APPEAL IS NOT TAKEN FOR DELAY ONLY AND THESE QUESTIONS ARE NOT OF A FRIVOLOUS CHARACTER, AND THESE CONCLUSIONS ARE PLAINLY MANIFEST FROM THE RECORD.

The briefs of appellees on their motions to dismiss and to affirm discuss a number of important questions of law and fact arising from the record in this cause.

The brief on motion to dismiss discusses the character of the Grant from Spain of the lands involved in this suit and the effect upon its Grant of the treaty between Spain and the United States ceding the State of Florida to the United States. That brief also discusses the nature of the claim of title of the alleged ancestors of appellees under this Treaty and under the Acts of Congress providing for the confirmation of such Grants. That brief also discusses the necessity of a survey of the Grant and of the Patent from the United States to convey the title to the Grantees.

The brief of appellees on their motion to affirm now presented to the Court undertakes to state the answer of the appellant to the Bill of Complaint in the District Court to the following other subjects. (a) The character of the Grant from Spain, as to whether or not it was a complete Grant of title or a conditional Grant; (b) the Treaty; (c) the assessment of the land; (d) that the legal and equitable title to the land passed under the Treaty to the United States; (e) that the original Grant was not sufficiently definite upon which to begin a survey of the lands granted; (f) that the Land Department held a survey of the lands necessary; (g) that the Grant as surveyed by the United States and patented does not conform to the locality described in said original Grant; (h) the effect of the Commissioners' report with reference to the

Grant; (i) the legal effect of the Patent from the United States to the alleged ancestors of appellees; (j) whether appellees had acquired title to the lands described in the Patent by adverse possession; (k) whether appellees are barred from bringing this suit by a laches; (l) whether appellees had adequate remedy at law; (m) whether appellees or those named in the decree are the legal representatives of the patentees and competent to sue.

We insist that a mere statement of these questions as being involved in the case made by the record and a discussion of them by appellees in their brief conclusively indicates that the appeal was not brought for delay and that the questions on which the decision of the cause depends are not frivolous.

We further submit that manifestly it will be necessary for the Court to investigate the record in this case in order to determine the very questions raised by appellees themselves in their briefs upon their motions to dismiss and to affirm.

This being true, the Court will continue the motion to affirm to the final hearing, and the discussion of these motions and the merits will be heard at the same time.

The Assignments of Errors assigned in the transcript of the record on page 1041 to 1050 inclusive also present for the consideration of these important questions of law the fact arising from the record, and the reading of these assignments of errors will disclose the questions intended to be discussed in the record of appellant are not frivolous but serious and important, and that the appeal, involving as it does the rights of the appellant in a large and valuable body of land, and, among other subjects, the Treaty between the United States and Spain and the Acts of Congress in pursuance thereof, and to carry the Treaty into effect and the proceedings in the United States Land Department concerning this Grant being also involved in this record, this Court will not, on a mere cursory examination on a motion to affirm, undertake to determine this entire controversy.

In the case of Missouri P. R. Co. vs. Castle, 224 U. S.,

541, the Court granted a motion to affirm a judgment under Subdivision 5 of Rule 6 on the ground that the questions involved had been so plainly foreclosed by decisions of this Court as to make further argument unnecessary.

Apparently this rule (Subdivision 5 of Rule 6) was made a part of the rules of this Court mainly for the purpose of a speedy determination of causes shortly after the filing of the record, and on motion, where, upon a limited investigation of the case, this Honorable Court reached the conclusion that the questions upon which reversal is prayed had already plainly been decided by previous decisions of the Court.

A reading of the questions raised by appellees in their brief and of the Specification and Assignments of Errors demonstrate that these questions raised in this case are not plainly frivolous and are not foreclosed by previous decisions of this Court and do require extended investigation and consideration by the Court.

STATEMENT OF ALLEGATIONS OF BILL.

An examination of the allegations of the bill of complaint will disclose that it was brought to obtain a decree enjoining the appellant from claiming title under certain sales made by the State of Florida for the non-payment of taxes and praying the cancellation of the deeds made in pursuance of these sales and other deeds executed by parties claiming title under said tax sales.

The First allegation of the bill states the appellees' title as being derived from a grant by Spain to one Miguel Marcos and the confirmation by the United States of that grant to his widow and children. This paragraph alleges that the grant was an inchoate right under the laws of Spain and that under the Eighth Article of the Treaty between the United States and Spain the United States occupied the position of Spain with regard to the grant and that the title thereto passed to the United States

subject to the equitable claim of the grantees (pages 2 and 3 of the Record).

The Thirteenth paragraph of the bill states the action of the Board of Land Commissioners recommended a confirmation of this grant and the report of the Board to Congress to that effect. This paragraph of the bill also states that under the provisions of the Act of Congress of May 23, 1828 (4th Statutes at Large, page 284), the grant was confirmed to the extent of a league square to be located within the limits of the original grant (page 7, R.).

The Fourteenth paragraph of the bill alleges that by the terms of the Sixth Section of said Act of Congress, the grantees were required to accept the confirmation of the grant to the extent of a league square or bring proceedings before the Judge of the Superior Court of the District of Florida, and that no such proceedings were brought, and that the ancestors of the appellees were, by said Act of Congress, confirmed in their title to said lands to the extent of a quantity equal to one league square (page 7, R.).

The Fifteenth paragraph of the bill alleges that the Judicial and Executive Branches of the Government of the United States held that the quantity of land contained in a league square is 4,438.68 acres; that it was the duty of the Attorney-General of the Territory to survey the lands so confirmed. This Fifteenth paragraph of the bill then sets out, as one of the Acts of Congress relied upon by the appellees, the Act of March 3, A. D. 1807, by the terms of which it was made unlawful to take possession of, survey or cause to be surveyed, or settle upon, any lands ceded or secured to the United States by any treaty with a foreign nation, or any land, the claim to which had not been recognized or confirmed by the United States (pages 7 and 8, R.).

The Sixteenth paragraph alleges that these lands were surveyed in 1847 as public lands and from 1831 to the 12th of February, 1894, were regarded as public lands. This paragraph states the order of the Land De-

partment of the 12th of February, 1894, declaring this grant to be a valid, confirmed, private grant to Teresa Rodriguez and ordered to be patented, and that on the 26th of June, 1895, the grant was patented by the United States to said Teresa Rodriguez, her heirs, assigns and legal representatives (pages 8 and 9, R.).

The Seventeenth paragraph alleges that from and after May 23, 1828, the date of the Act of Congress above referred to, and until this order of February 12, 1894, Teresa Rodriguez and her heirs, assigns and legal representatives were excluded from the possession of the land by the United States, and the United States had both the legal title and possession and right of possession of said lands, and any occupancy of said lands by any others than the United States was a mere trespass and that the appellees and those under whom they claimed were not able to take possession of the lands or to locate the same, because the United States claimed the nature of the grant was public lands (page 9, R.).

The Eighteenth paragraph of the bill sets out the first of the tax sales sought to be illegal and void and alleges that during this period when the United States was in possession, it had the legal title to these lands, to wit, on the 5th of July, 1852, that the sheriff and tax collector of Orange County, Florida, attempted to sell and convey these lands for non-payment of taxes, and that the deed was placed on the public records; and that the assessment, sale, and deed were null and void because the sale was for the non-payment of taxes for the years 1845 to 1850, inclusive, during which time the legal title to said lands was alleged in the bill to have been held by the United States, and that the United States claimed the ownership and had the possession thereof, and that the said 4,438.68 acres of said grant was so confirmed to Teresa Rodriguez as an unsegregated part thereof, and that all of said lands were, for the reasons just stated, not subject to taxation (pages 9 and 10, R.). Subdivision 2 of this paragraph further alleges that the said 4,438.68 acres out of such grant was the only portion that could

be subject to taxation under the law as construed and announced and held by the Judicial and Executive Branches of the Government of the United States (page 10, R.).

The Nineteenth paragraph of the bill alleges that on the 23rd of April, 1872, the lands contained in this grant were again sold for the non-payment of taxes for the years 1867, 1868 and 1869, and alleges that the ancestors of the appellees were, at that time, the owners of an inchoate right in 4,438.68 acres of said land under said grant by Spain, and that the United States claimed ownership of the whole grant and was in possession thereof and held and treated the lands as public lands of the United States. This paragraph further states that a deed was made under said sale on the 23rd of April, 1872, by one Robert C. Partin as Tax Collector to one William Mills. Subdivision 1 of this paragraph states that the lands were not subject to taxation during said years of 1867, 1868 and 1869, but were at all times between May 23, 1828, and up to 1895, in the adverse possession of the United States claiming to be the owner thereof. This date, May 23, 1828, was the date of the Act of Congress confirming the grant hereinabove referred to; and 1895 is the year in which the patent was made by the United States to Teresa Rodriguez, her heirs, assigns and legal representatives (page 12, R.).

The Twenty-fourth paragraph of the bill alleges that during the time that one Powell occupied portions of this land, the appellees and their predecessors in title were precluded from bringing any action for the recovery of the lands in the occupancy of Powell, for the reason that all the lands contained in the said grant were adversely held and claimed by the United States and held to be public lands by the United States (page 15, R.).

The Twenty-fifth paragraph of the bill asserts that, while the appellees were excluded from possession by the United States, Powell conveyed portions of the lands and certain other tax sales were made of the lands to certain other persons (pages 15, 16, R.).

The Thirty-second paragraph of the bill states the action of the Land Department of the United States; that the United States refused to recognize the grant until November, 1894, when the ruling of the Commissioner of the General Land Office was reversed by the Secretary of the Interior and the United States then recognized the lands as private lands and as belonging to the appellees and to those under whom they claimed. This paragraph further avers that the survey of said private claim or grant was not approved and did not become effective as a segregation of said lands from public domain until June 18th, 1894 (page 18, R.).

The Thirty-third paragraph of the bill states the action of the United States in attempting to convey a portion of these lands included in this grant to the State of Florida (pages 18, 19, R.).

The Thirty-fourth paragraph of the bill alleges that on the 26th of June, 1895, the United States patented to the legal representatives of Teresa Rodriguez the said lands granted to the said Marcos, as set out in paragraph First of the bill (page 19, R.).

The Thirty-fifth paragraph of the bill states that from and after June 26, 1895, the appellees and their predecessors were for the first time entitled to the possession of these lands and from and after said date, said lands first became subject to taxation (pages 19, 20, R.).

In the Thirty-sixth paragraph of the bill, the appellees allege that the patent is the evidence of the action of the United States upon the title to the lands granted to said Marcos, and is a conveyance of the interest of the United States therein, and that the patent is based on the survey approved June 18, 1894. In this paragraph, the appellees then distinctly allege that the United States did not relinquish title and possession until the date of said patent, to wit, the 26th day of June, 1895, and that until said date the appellees and those under whom they held title had no right to possession of the lands in said patent described. This paragraph further asserts that the obligation to confirm grants of lands assumed by the United

States by the Treaty with Spain was political in character and was to be discharged as the United States determined, and that that Government retained possession and title from May 23, 1828, until the issuance of the patent, and that before the approval of the survey of the lands granted to Marcos, the legal title was in the United States, and the claim of the appellees attached to no particular land (page 21, R.).

The prayer of the bill was for an injunction prohibiting the appellant from obtaining or holding possession of these lands and from claiming any right, title and interest in the land under the deeds referred to in the bill, and from selling, conveying or encumbering the land, or from trespassing thereon, and for the cancellation of the several deeds made under said tax sales above referred to and the other deeds made by persons claiming under said tax sales and for the cancellation of all tax sales, tax certificates and tax deeds issued thereon in reference to said lands prior to February 12, 1894, the date of the order of the Secretary of the Interior recognizing this grant as a confirmed grant and directing the issuing of the patent therefor.

From the foregoing references to the bill of complaint, it will clearly be seen that the case attempted to be made by the appellees was that the grant from Spain to Marcos was an inchoate grant and was not confirmed in full and complete title by the Treaty between the United States and Spain, and that the action of the Board of Land Commissioners appointed by the United States did not recognize this grant as a complete grant, and that the grant was not confirmed as a complete and perfect title by the Act of Congress of May 23, 1828. The true construction of the Treaty and its effect upon this grant are directly made necessary by the appellees' bill of complaint to support their case. The true construction and application of the Act of Congress of May 23, 1828, confirming the grant and its effect are made necessary by the appellees' case as stated in the appellees' bill of complaint. The legal effect of the action of the United States

Land Department in refusing prior to 1894 to recognize this grant and in attempting to convey portions of it to the State of Florida under the Swamp and Overflow Land Acts is made a part of appellees' case. The alleged necessity of a survey of the grant and of the approval of such survey, is raised by the bill, the question, as to whether a patent is necessary to perfect the title of the appellees, is made a part of the case under which the appellees claim relief in their bill. The construction, application and effect of the Act of Congress of March 3rd, 1807, in preventing persons from taking possession of or surveying lands ceded to the United States, are directly raised by the bill to excuse the appellees and those under whom they claim from surveying or having surveyed this grant and from taking possession or bringing proper action against others who took possession of the grant.

The purposes of the allegations of the bill hereinbefore referred to are to present the case attempted to be stated by the appellees, to-wit, that the sales for non-payment of taxes for the years 1845 to 1851, inclusive, were void, because, as appellees contend, the lands were still a part of the domain of the United States and the United States was in possession of same under its laws, and that the sales for the non-payment of taxes of 1867 to 1869, inclusive, were void for the same reasons.

The bill further attempts to allege that, by reason of the effect of the Acts of Congress referred to in the bill and the true effect and construction of the grant and of the Treaty, the appellees had no right to possession of the land until 1895 and no right to maintain any action based on their claim of title to the land. These matters as to possession are set up in the bill as a part of the basis of appellees' right of action. It will thus be seen that the claims of title of the appellees and their case and right to relief depend upon the true construction of the Treaty, the Acts of Congress passed to carry out the Treaty, particularly that of May 23, 1828, the Acts of the Board of Land Commissioners and the Decisions and Rulings of the United States Land Department and the

Secretary of the Interior and the nature of the claims of the appellees and those under whom they derived title, to-wit, claims prior to the issuing of the said patent. Other grounds of attack are made in the Bill upon the tax sales of these lands and the deeds under which appellant claimed title, but the taxable character of the land was the principal ground, as shown by the Bill.

STATEMENT ON MERITS OF THE CASE.

Appellant is also herein referred to as "defendant," and appellees as "complainants."

This is a bill in equity filed on May 1, 1907, by the complainants against the defendant, praying a writ of injunction against defendant from taking possession of or disturbing complainant's alleged possession of certain lands patented by the United States to the legal representatives of Teresa Rodriguez and which were originally granted to M. Marcos on the 18th of October, 1815, to-wit, a certain Spanish Grant known as the Rodriguez Grant. The bill further prays that the tax deeds from John Simpson, Sheriff and ex officio Tax Collector of Orange County to John Starke, dated the 5th of July, 1852, recorded in Book "B," pages 277 and 278, and the tax deed from Robert C. Partin, Tax Collector, to William Mills, dated the 23d of April, 1872, recorded in the public records of Orange County, Florida, in Miscellaneous Records 8, page 310, be decreed to be cancelled; and that the deed from William Mills to George C. Powell, dated the 3d of May, 1872, recorded in the records of Orange County, Miscellaneous Records, Book 8, page 312, and the deed from George C. Powell to Henry Sanford, dated the 27th of October, 1881, recorded in Orange County, Book "Y," page 652; and deed from George C. Powell to Henry Sanford, dated November 15, 1881, recorded in Orange County in Book "Y," page —; and the deed from Henry S. Sanford to Edward Dawes, George C. Thompson and Anthony Norris, Trustees of the Florida Land and Colo-

nization Company, Limited, dated the 9th of January, A. D. 1884, recorded in Orange County Records, Deed Book 12, page 400; and the deed from Edward Dawes and George Thompson, Trustees of the Florida Land and Colonization Company, Ltd., recorded in Book 35, page 541, Lake County Records; and the deed from the Florida Land and Colonization Company, Limited, to the defendant, Wilson Cypress Company, dated May 3, 1900, and recorded in the public records of Lake County, Florida, in Deed Book 35, page 593, be decreed to be null and void and cancelled of record, and that the Clerk of the Circuit Court for Orange County and the Clerk of the Circuit Court of Lake County be directed to enter upon the margin of the records of said deeds the cancellation thereof, and that defendant be required to surrender for cancellation the deed from the Florida Land and Colonization Company, and all other of said enumerated deeds affecting said property in its possession. The bill further prays that all outstanding tax sale certificates against the lands issued prior to February 12, 1894, and the tax deeds issued thereon be required to be surrendered and cancelled upon making holders thereof parties to the suit. An amended bill was filed praying cancellation of certain other tax deeds to the said Henry S. Sanford and certificates held by the said Henry S. Sanford and by M. O. Crumpler, J. C. Krice and Buffom Loan and Trust Company. The complainants claim to be the heirs at law of Teresa Rodriguez, in whose favor the Grant was reported favorably by the Commissioners in 1825 and confirmed by Act of Congress May 23, 1828. The grounds on which the said deed from Simpson, Tax Collector, to said Starke is prayed to be cancelled are stated in the bill and amended bill. The principal of said grounds are that the lands from 1845 to 1851 were not subject to taxation, the title being in the United States, and that no assessment was made of said lands for taxes, and that the said tax deed from Simpson, Sheriff and Tax Collector, to Starke, as recorded, has no witnesses.

The grounds upon which the deed from Robert C.

Partin as Tax Collector to William Mills is prayed to be cancelled are also stated in the bill, the principal of which are that the lands were not subject to taxation and that the said Robert C. Partin as Tax Collector had no authority to issue said deed to the said William Mills. The grounds on which the other deeds are prayed to be cancelled in the original bill are that the said defendants and the grantees in said other deeds claimed under the said deeds from Simpson as Sheriff and Tax Collector to Starke and from Robert C. Partin as Tax Collector to William Mills. The only grounds alleged in the amended bill for cancellation of the other tax deeds and certificates mentioned in the amended bill are that it is claimed by complainants that the property is not subject to taxation. The only party made defendant to the bill is the Wilson Cypress Company.

The defendant alleges in its answer and insists that at the time the said tax deed from Simpson as Sheriff and Tax Collector to Starke was made that the said Rodriguez Grant had been confirmed by Congress to Teresa Rodriguez in accordance with her petition filed with Commissioners, and that it was subject to taxation, title being in her, her heirs and representatives, by virtue of the said Grant made in 1815, reported favorably for confirmation in 1825 and confirmed by the said Act of Congress in 1828, and that the land is sufficiently identified and that the title passed by the Grant under the treaty between Spain and the United States, and that certainly after the confirmation of the Grant by Congress in 1828 it was subject to taxation; that it was not necessary that the said Grant be segregated from the public domain by any further or other proceedings after the confirmation of the Grant, but that if a survey was necessary to be made, that such survey was made in January, 1851. Under the Acts of Congress it was the duty of the said Teresa Rodriguez or her heirs and representatives to have taken action to have the Grant surveyed and connected with the Government survey and to have furnished the information to the Surveyor General, from which

the survey could be made; that the title passed by this Grant was a perfect title, and, therefore, the Grant as such was subject to taxation after the ceding of Florida to the United States, and certainly after the confirmation of the Grant by Act of Congress May 23, 1828. Defendant further insists that after this great lapse of time it will be presumed that the said Theresa Rodriguez or her heirs and representatives had a survey made upon the ground that constitutes this Grant, located same and furnished the said information to the said Survey General, upon which the U. S. Survey of 1851 was made.

In reference to the assessment of said Grant for the years 1845 to 1851, inclusive, defendant insists that after this lapse of time, and the Sheriff and Tax Collector having sold the property for said taxes due for said years, it will be presumed that such assessment was made, and that no sufficient proof has been introduced by complainants to show that no such assessment was made, and that further under the laws of Florida then in force, this property being now claimed to have been the property of Teresa Rodriguez and her children who were absent from the State of Florida, it will be presumed that the property was sold for taxes as that of owners, unknown, and that in such case the assessor was authorized to make a return or statement to the Sheriff of such property and the amounts due thereon, and that thereby the sheriffs were authorized to collect the taxes due upon the property and it was not necessary for such return to appear upon the assessment roll.

Defendant further insists that there was no evidence that the original deed did not have witnesses or was not properly acknowledged for record, and it will be presumed, after this lapse of time, that the original deed had witnesses and was properly acknowledged, the same now appearing upon the public records of Orange County, Florida, and that if, as matter of fact the original deed did not have witnesses the deed would be void upon its face and that would constitute no ground authorizing a court of equity to decree the cancellation of the deed.

All of the other various grounds upon which it is claimed this deed should be cancelled, found in Paragraph 18 of the answer, have not been established by proof, and after this long lapse of time it will be presumed that the assessment, advertisement and sale were regular and in accordance with the law. In reference to the deed from Robert C. Partin as Tax Collector to William Mills, the objection that the land was not subject to taxation in 1867, 1868 and 1869 is not well taken because the Grant had been confirmed in 1828 by Act of Congress and was a well known tract of land by that name, and in fact had been surveyed in 1851 by M. A. Williams, Deputy Surveyor General, and such survey had been approved by B. A. Putnam, then Surveyor General. The objection stated in the bill to this deed that Robert C. Partin as Tax Collector had no authority to execute the deed but that it should be executed by the County Clerk, if valid, would make the deed void upon its face, and a court of equity has no jurisdiction or authority to order the cancellation of such deed. Defendant insists that this paper is sufficient as a certificate of acknowledgment of the sale for taxes by Robert C. Partin to William Mills, and on said paper the said William Mills, or those claiming under him, would be entitled to a tax deed and that the same constituted an equitable title and color of title. The other specific grounds of objection to the said deed from the said Robert C. Partin as Tax Collector to William Mills contained in Paragraph 20 of the bill have not been established by proof, and it will be presumed after this lapse of time that the said tax proceedings were duly taken and the burden of proof is on the complainant to show that the proceedings were not had or taken, if the complainants seek relief by way of cancellation of the said deed on account of said objection.

The facts as shown by the pleadings and evidence in the case are that the said sale for nonpayment of taxes upon this grant by the said deed from John Simpson as Sheriff and ex officio Tax Collector of Orange County, Florida, to the said John Starke was made on the 5th day

of July, 1852, more than fifty years before the filing of the bill of complaint in this cause praying the cancellation of said deed; that the said deed from said R. C. Partin as Tax Collector for Orange County, dated the 23d of April, 1872, was executed and recorded thirty-five years before the filing of the said bill of complaint praying the cancellation of such deed and the recording thereof; that the deed from Mills to Powell prayed to be cancelled was executed and recorded more than thirty-four years before the filing of the bill herein. The deeds from Powell to Sanford were executed in 1881, twenty-six years before the filing of the bill, and recorded in 1884, twenty-three years before the filing of the bill, and that the deed from Sanford to the Trustees of the Florida Land and Colonization Company were executed and recorded twenty-three years before the filing of the bill, and that the deed from the Florida Land and Colonization Company to defendant was executed and recorded on the 3d of May, 1900. The bill of complaint in this cause was filed the first of May, 1907, but two days less than seven years from the date of the executing of the deed to this defendant; that the Grant was made in 1815 and reported favorably for confirmation in 1825 and confirmed by the said Act of Congress of May 23, 1828, and that as shown by the bill, in 1890 complainants sought to procure from the United States a patent to these lands, and no action appears to have been taken by complainants themselves between the confirmation of said Grant in 1828 and 1889 in reference to asserting title or right of possession of such land. On the 12th of February, 1894, the Secretary of the Interior ordered a patent to issue, which was more than thirteen years from the date of said order to the date of the filing of the bill herein. On the 26th of June, 1895, a patent issued, nearly twelve years before the filing of the bill. Defendant insists that complainants have shown no sufficient facts or reasons excusing their gross laches and that of those under whom they claim title in not sooner taking action to have their rights recognized by the Land Department and in bringing suit in this court to cancel said

alleged deeds as soon as they were made and recorded or within a reasonable time thereafter, or certainly after the issuing of the said patent. The only fact that is alleged in the bill is that heretofore, on June 24, 1902, complainants brought suit against defendant in this court to cancel the deed to defendant, and it is further alleged in the bill that without fault of complainants, through the neglect of their counsel they were obliged to dismiss said suit. The answer alleges and the records in said suit show that said bill was not filed until the 24th of June, 1902, and was dismissed on the 4th of April, 1904. This bill was not brought for three years thereafter and for twelve years after the issuing of the patent. The answer further alleges that the record in said case shows the reason why the evidence was not taken was that complainants did not keep in communication with their counsel or furnish their counsel with evidence to introduce in the suit, and that no legal reason has been shown for not prosecuting said suit or for failure to bring and file the present bill for twelve years after the executing of the patent and within two days of seven years after recording the deed to defendant and for the great number of years that have elapsed since the said several deeds were recorded as above mentioned. The defendant demands proof of the pedigree of complainants and that complainants establish that they are the heirs at law of Teresa Rodriguez. Defendant insists also that complainants are barred under the statutes of limitation of the State of Florida from maintaining this bill and are barred by laches and delay and abandonment of the said property of any relief in a court of equity.

The defendant alleges and the proof establishes that the said George C. Powell was in actual occupation and possession of said property from 1872, when the same was conveyed to him, and he was then living there to 1881 when he conveyed the same to Henry S. Sanford, and for a short time after said conveyance, and the statutes of limitations, as based upon the said possession of said Powell is sufficient to bar the complainants' right to main-

tain said bill; that after 1881 said Henry S. Sanford and the Florida Land and Colonization Company and this defendant have been in actual possession of the property through their agents residing upon the property and having the care and control of same, and that such possession existed at the time this bill was filed. Defendant further insists in its answer to the bill and the amended bill that all of the necessary parties are not before the court to authorize decree in this cause.

At the time of the filing of the bill defendant was in possession of said lands, and complainants cannot, therefore, maintain a bill to cancel said deed. The grounds stated in the bill for cancellation of same either are not sustained by the evidence or are objections apparent upon the face of said deeds, and complainants would not be entitled to relief upon the said bill. The evidence shows that actual possession by George C. Powell from 1872 to 1881 or 1882, by operating a mill and cutting timber and fencing material and fuel on this land and cultivating portions of it. After the land was purchased by Henry S. Sanford, the evidence of Ingraham shows that he took possession of the land for Sanford and had an agent on the land and received certain fruit from the land. The evidence also shows that F. H. Rand, the agent of the Florida Land and Colonization Company and the Trustees of that company had possession, and agents of that company had possession of the lands from the time they purchased the land until they sold to the Wilson Cypress Company. The Wilson Cypress Company had had an agent upon the land ever since 1900 when they purchased the land. Each of these agents had a cabin or house on the land and resided on the land. The said F. H. Rand paid the taxes for the Florida Colonization Company and the said defendant has paid the taxes ever since 1900. The complainants in this case and those under whom they claim never paid any taxes or asserted any possession or ownership of said land except the claim of one Martin, their attorney, after the issue of the patent that he went upon the land and appointed one J. W. Owens as agent

to look after the land. The testimony of said Owens shows that he never remained in the vicinity of the land or had anything to do with it for more than a year or a year and a half, to-wit, in 1896 and 1897.

Under the above statement of facts the complainants have not only failed to establish the allegations of their bill but are clearly barred in a court of equity by laches and delay and by the statutes of limitation from obtaining the relief prayed in the bill.

At the October Term, 1914, and before the cause is reached for final argument on the docket, the appellees now file their motion to affirm the decree appealed from.

THE MOTION TO AFFIRM CAN NOT BE FILED AT THIS TIME AND SHOULD NOT NOW BE CONSIDERED.

In the case at bar the record was filed March 13, 1913, and the appellees at the October Term, 1913, filed their motion to dismiss the appeal for want of jurisdiction, and also filed briefs in support of the motion and set the motion down for hearing on the 20th of October, 1913.

The appellant filed its briefs opposing the granting of this motion. On the return day of the motion it was submitted on elaborate briefs and considered by the Court, and thereupon the order was entered continuing the decision on the motion until the final argument of the cause.

THE SPECIFICATIONS OF ERRORS RELIED UPON BY THE APPELLANT AND HEREAFTER DISCUSSED IN THIS BRIEF INDICATE THE IMPORTANT QUESTIONS INVOLVED IN THIS CASE AND WHICH SHOULD BE CONSIDERED

UPON THE FINAL HEARING UPON THE MERITS.

These Specifications are as follows:

1. The United States Circuit Court of Appeals erred in holding and deciding that the lands in controversy were not segregated from the public domain and the title thereto remained in the United States until the issuance of Patent, and that therefore they were not taxable by the State of Florida at the several times they were listed for taxes and sold for nonpayment thereof.

2. The Grant involved in this case was a complete and perfect title certainly from May 23rd, 1828, the date of the Act of Congress confirming this Grant, and no title thereafter remained in the United States to this land, and the Court erred in holding to the contrary. See Assignments of Errors Nos. 19 and 20 (Record, p. 1046-1047).

3. This Grant was not a part of the public domain after the Treaty or after May 23rd, 1828, the date of the confirmation of the Grant by Act of Congress, nor at the time of the issue of the Patent in 1895, and the Court erred in holding to the contrary, being included in Assignments of Errors Nos. 2, 8, 17, 18, 19, 20, 21 and 22.

4. This Grant being one from Spain before the ceding of Florida to the United States, and having been confirmed by Act of Congress of May 23rd, 1828, was subject to taxation prior to its sale in 1852, to-wit: from May 3rd, 1828, the date of said confirmation of said Grant by Act of Congress, and was properly sold for taxes due to the State of Florida in 1852. See Assignments of Errors Nos. 8, 17, 18, 19, 20, 21, 22, 23 and 24 of Record.

5. The bill in this cause could not be maintained in equity on account of lands not being unoccupied, and on account of possession of defendant at the time of filing bill, and the said lands not being in possession of complainants at the time of filing bill—being assignments of error No. 32 and No. 33.

6. The claim of legal title by complainants is not clear, certain, definite and settled, and a court of equity, therefore, has no jurisdiction to entertain the bill in this cause—being assignment of error No. 33.

7. The complainants have not established by the evidence that they are the heirs at law of Teresa Rodriguez, and, therefore, entitled to maintain this suit—being assignments of error No. 4, No. 5, No. 30, Nos. 31 and 37.

8. The complainants were not entitled to maintain this bill, by reason of certain of complainants having proved their pedigree and that under the doctrine of representations they represented all of the heirs of Teresa Rodriguez—being assignment No. 37.

9. The complainants cannot maintain this bill, and the decree thereon is erroneous, because it is brought only against Wilson Cypress Company as defendant, and the record shows that other parties defendant are necessary before the court could enter a decree on this bill and in decreeing cancellation of the deeds therein mentioned, as set forth in assignments of error No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 36 and No. 37.

10. The complainants' right to maintain this suit is barred by their laches and delay in bringing the suit and by their abandonment of the property and their claim of title thereto—being assignments of error Nos. 22, 23, 24, 25, 26, 27.

11. The complainants cannot maintain this suit on account of any alleged defect in the execution and acknowledgment of the deeds mentioned in the bill or in the tax proceedings after this long lapse of time, and the court will now presume proper execution and acknowledgment of the deeds and assessments and other tax proceedings under which the sales for taxes were made and the original survey prior to the tax sale in 1852. This Spanish Grant was subject to taxation prior to its sale in 1852, to-wit, from May 3d, 1828, the date of the confirmation of the Grant by Act of Congress, and was properly sold for taxes in 1852. See assignments of error No. 19 to No. 27 inclusive.

12. Under the laws of Florida the tax deeds mentioned in the bill vested in the purchaser all rights, title and interest either in law or equity of the person from whom such taxes are due, and the court erred in holding to the contrary, and entering its decree based thereon. See Assignments of Error, Nos. 6, 7, 8, 17 and 18.

13. The decree states that the tax deed to John Starke and the tax deed to William Mills mentioned therein are based upon assessments of the property prior to the issuance of the patent in 1895, and while the validity of the Grant was denied by the United States, and, therefore, the deeds were null and void. The court erred in this holding and in rendering its decree on this ground or any of the grounds stated in the bill. This is included in assignments Nos. 6, 7, 8, 17, 18, 19, 20, 21 and 22.

14. This suit is barred by the statutes of limitation of the State of Florida and by adverse possession of the defendant and those under whom it claims title, and the court erred in holding to the contrary,—being by assignments No. 19 to No. 25, inclusive, and assignment No. 35.

15. The possession of defendant was sufficient in character to amount to an adverse possession. The complainants alleged the land was wild and unoccupied, and the burden of this case was on the complainants to prove that allegation in order to maintain this suit. The house occupied by defendant's agent was on the Grant, and the court erred in holding to the contrary of these propositions. See assignments of error Nos. 22, 23, 32, 33, 34 and 35.

16. Defendant had title under other sources of title besides the tax deeds mentioned in the decree, and, therefore, the court erred in rendering its decree that defendant had no title in this land either under the tax deeds mentioned or under other sources of title. See assignments of error Nos. 10 to 16, inclusive, and No. 35.

17. The bill in this case is barred by the statutes of limitations of the State of Florida, being Sections 1718, 1719 and 1721 of the Revised Statutes. See assignments of error Nos. 19 to 25 inclusive, and No. 35.

18. The bill in this case is barred under Subdivision 4 of Section 1725 of the Revised Statutes of the State of Florida. See assignments of error Nos. 19 to 25 inclusive, and No. 35.

19. The bill in this cause is also barred under Section 20 of the Act of 1872, Chapter 1887, and Section 63 of the Act of 1874, Chapter 1976, Laws of Florida, requiring suits to set aside title to be brought within one year after recording the deed, and under similar provisions of the Revenue Acts of the State of Florida since 1874. See assignments of error Nos. 19 to 25 inclusive and No. 35.

20. The court erred in decreeing the cancelling of the several deeds mentioned in the bill of complaint, to-wit, the tax deed to John Starke, dated the 5th of July, 1852, and said deed to William Mills, dated April 23d, 1872, and the said deed from Edwin S. Dawes and George Augustus Thompson, Trustees, to Florida Land and Colonization Company, and the said deed from Florida Land and Colonization Company to Wilson Cypress Company, and that they were null and void and should be cancelled, as stated in assignments of error Nos. 6 to 14, inclusive.

21. The court erred, for the reasons hereinbefore stated in specifications above, in decreeing that the Wilson Cypress Company had no estate, right, title and interest in the said lands described in the decree and in enjoining the Wilson Cypress Company from claiming title or possession under said deeds or right of occupancy,—same being covered by assignments of error No. 13, No. 14, No. 15 and No. 16.

22. The court erred in decreeing the cancellation of said deeds above mentioned and making its final decree herein for all of the reasons hereinabove set forth in said specific assignments, and further in not requiring the complainants to repay to defendants the taxes paid upon said lands by it and by its predecessor in title, the Florida Land and Colonization Company or either, as shown by the evidence, as a condition precedent or a pre-requisite to cancelling the said deeds mentioned and described in

said decree. See assignments of error Nos. 1, 3 and 6 to 16 inclusive.

ARGUMENT AS TO JURISDICTION OF THIS APPEAL.

FEDERAL QUESTIONS INVOLVED IN THIS SUIT.

There are, as will be seen from the allegations of the bill, a number of Federal questions distinctly raised by the bill of complaint and necessarily involved in it and passed upon by the courts in making the decrees appealed from herein. These Federal questions are also necessary to be determined in order to sustain the case attempted to be made by the appellees in their bill.

CONSTRUCTION OF TREATY BETWEEN UNITED STATES AND SPAIN.

The appellees in their bill of complaint insist that this grant was not subject to taxation by the State of Florida in the years 1845 to 1851, inclusive, and in the years 1867 to 1869, inclusive, on the alleged ground that the grant of this land from Spain to Marcos was an inchoate or incomplete grant, and that by the true construction of the terms of the treaty the grant did not become a complete and perfect title in Marcos. The defendant insisted in its answer that the grant was confirmed as a complete and perfect title by the force and effect of this treaty. Therefore, the construction and application of the treaty to the grant and the language of the grant must be considered and determined by the Court before it could be held that the lands were not subject to taxation during the years referred to, and that the sales for taxes during those years were void and that the deeds should be cancelled as claimed by appellees in their bill of complaint.

THE EFFECT OF ACTION OF BOARD OF LAND COMMISSIONERS APPOINTED TO EXAMINE THESE LAND GRANTS.

The bill alleges the action of this Board of Land Commissioners reporting this grant to Congress for confirmation and refers to American State Papers where the proceedings of this Board are found, and also in the same paragraph refers to the several Acts of Congress relating thereto and makes the said proceedings of the Board of Land Commissioners and the several Acts of Congress a part of the bill (p. 3 of R.). The nature of the grant as determined by this Board, to-wit, as to whether or not there was a perfect and complete grant vesting complete title, and the construction and effect of each of the Acts of Congress relating thereto and their effect upon the character of this grant, are thus introduced into the bill of complaint. The several Acts of Congress providing for examination and report upon these grants and the confirmation of the grants must be considered in determining whether or not the grant was a complete title for the purposes of taxation; the Act of Congress of May 8, 1822, referred to and construed in the case of U. S. vs. Percheman, 7 Peters 51, the Act of Congress of February 8, 1827, and the Act of May 23, 1828 (4 Stats. at L. p. 284), and the Acts of May 26, 1830, June 22, 1860, and June 10, 1872. The three latter Acts extended the right of the claimants under this class of grants to present their cases to the United States courts for adjudication. These Acts of Congress are all referred to and set out, in substance, in the case of Mitchell vs. Furman, 180 U. S., 402, 404.

CONSTRUCTION AND EFFECT OF ACT OF MAY 23, 1828 (Stats. at L. p. 284).

This grant having been made for 5,500 acres was confirmed by the force and effect of the Act of Congress of

May 23, 1828, above referred to. The construction and application of this Act to the terms of the grant is absolutely necessary to support and maintain the case attempted to be made in the bill by the appellees. They maintain in their bill that the grant was an inchoate or incomplete grant and that under the terms of this Act of Congress a survey of the grant was necessary and a patent was necessary to pass the title of the United States and that the title to the property remained in the United States until the patent was issued in 1895. All of these contentions as to the force and effect of this act of Congress are denied by the defendant and directly put in issue by the bill and answer and passed upon by the District Judge in his decree and opinion. The first portions of the opinion (pp. 91-92 of R.) distinctly set out that the validity of the defendant's title depends entirely upon the question of whether the property was subject to taxation by the State of Florida prior to the issue of the patent by the United States in 1895. The Court then reviews the acts of Congress of 1825, of 1827 and of 1828 in reference to these grants and determines that the taxation of the land by the State prior to the issue of the patent was not justified, and further determines that no occupation or possession under these tax deeds prior to the issue of the patent was valid, and that persons holding such possession under said deeds could not rely upon the Statutes of Limitation or title by adverse possession. It is therefore apparent from the allegations of the bill and from the judgment of the District Judge, which was affirmed by the U. S. Court of Appeals, that the construction of these acts of Congress was necessary to support and maintain the case made by the complainants in their bill. The U. S. Court of Appeals in its opinion (see pp. 1039-40 of R.) also held and determined that the title to these lands remained in the United States until the issuance of the patent and therefore were not taxable by the State of Florida.

ACTION OF THE U. S. LAND DEPARTMENT AND EFFECT THEREOF ON THE RIGHTS OF APPELLEES AND THOSE UNDER WHOM THEY CLAIM.

The bill alleges that from the year 1831 to the 12th of February, 1894, the U. S. Land Department held and determined that this was not a valid grant and refused to recognize it, and that therefore the possession of and the title to the lands remained in the United States, and that these facts excuse the appellees or those under whom they claim from taking any action in reference to the title or possession of the land. The District Judge in his opinion sustained this construction of the force and effect of the action of the U. S. Land Department and the rulings of the U. S. Land Commission (see pp. 92-93 of R.). The defendants deny that the ruling or action of the Land Department prior to the final decision and ruling by the Secretary of the Interior had any such legal effect upon the possession or title to this land and insist that from the confirmation of the grant by Congress, May 23, 1828, the legal title and right of possession in these lands was in Teresa Rodriguez and her heirs and assigns. The force and effect of the action of the U. S. Land Department and the true construction of the act of May 23, 1828, as to its application to this grant is thus drawn directly in question in this suit. The bill alleged that prior to the ruling of the Secretary of the Interior, February 12, 1894, both the Executive and Judicial Departments of the Government had determined that a league square of land, as mentioned in the act of Congress of May 23, 1828, was 4,438.60 acres, and as this grant contained 5,500 acres, the entire grant was not confirmed by the force and validity of the act of May 23, 1828. The Secretary of the Interior in his opinion and by his order of February 12, 1894, held that a league square was within the meaning of the said act of Congress and claimed 6,002.50 acres, and therefore that by the force and effect of the said act of

Congress of May 23, 1828, this grant was fully confirmed and vested title in Teresa Rodriguez, her representatives, heirs and assigns. The ruling therefore of the Secretary of the Interior and the action of the Land Department were directly involved in this case as affecting the taxable character of the land from the date of said act of Congress and the right to the possession of the land by the appellees and those under whom they claim.

THE QUESTION AS TO WHETHER OR NOT A SURVEY AND APPROVAL OF SUCH SURVEY UNDER THE TERMS OF THE GRANT IS INVOLVED IN THIS CASE.

The bill of complaint alleges that a survey of the grant was necessary and further alleges that this survey was not approved until June 18, 1894. The complainants in their bill refer to the said patent as a part of their case and as a part of the bill. The patent is found on pages 838 *et seq.* of the record and the survey therein referred to on page 839 was made by M. A. Williams in January, 1851, under the contract with Benjamin A. Putnam, Surveyor-General of Florida, on the 19th of October, 1850. The original survey of Williams referred to in the patent and made a part of it was approved the 20th of June, 1851, by B. A. Putnam, Surveyor-General, as shown by exhibit on page 1027 of the record. The appellant alleged in the answer that the grant did not require any survey under the terms of the grant and laws of the United States; that under the proper construction of the laws of the United States the survey was approved by force and effect of the order of approval of B. A. Putnam, Surveyor-General, in 1851, as above referred to. The appellees insist that a survey and approval of the survey was necessary and that the only approval which could be recognized by the Courts of the United States was one made in 1894 and that prior to this approval of

the survey in 1894 the land was not subject to taxation. These were Federal questions which depended upon the construction of the laws of the United States for their determination.

APPELLEES INSIST IN THEIR BILL THAT A PATENT WAS NECESSARY TO VEST TITLE IN APPELLEES OR THOSE UNDER WHOM THEY CLAIM BEFORE THE LAND BECAME SUBJECT TO TAXATION.

The bill in this case proceeds upon this theory of the necessity of the issue of a patent to make perfect and complete title of appellees or those under whom they claim before the land could be assessed for taxation or sold for nonpayment of taxes. This question necessarily requires a consideration of the grant from Spain to Marcos and its terms and effect, of the treaty in regard to such grant, the action of the Land Commissioners, and the acts of Congress passed to carry out this treaty. The appellees insisted that no patent from the United States was necessary to perfect this title; that must be determined under the treaty, the terms of the grant and the terms of the acts of Congress, and directly present Federal questions requiring a construction of the treaty and the several acts of Congress applicable to this grant. The appellees in their brief filed on this motion state that their case is simply that of persons claiming under a patent from the United States. It will be seen that this is a case where the appellees claim title to this land as the defendants of the original grantee from Spain (Marcos) and as the descendants of Teresa Rodriguez, to whom, with her children, the grant was confirmed. The determination as to the taxable character of the land, the possession and right of possession of this land prior to the issue of the patent, the effect of the laws of the United States upon the taxable character of the land and

the nature of the title of the United States in the land prior to the patent, are all involved in the case, and appellees' right to have these sales for taxes declared void and the deeds made in pursuance of the sale cancelled depend upon the construction that this Court will put upon the Grant, the Treaty and the Acts of Congress, namely, as to whether or not a patent was necessary to issue from the United States to vest such title in the appellees as was subject to taxation.

RIGHT OF POSSESSION BY THE UNITED STATES FROM DATE OF TREATY TO ISSUE OF PATENT.

It is alleged by the appellees in their bill and asserted by them in this case that until a patent issue the possession and right of possession of these lands vested in the United States under the treaty with Spain and the laws of the United States, and therefore the lands were not taxable, and also that the long years of possession by appellant and those under whom they claimed was of no force and effect to give them title by adverse possession or to bar the complainants' right of action by the Statute of Limitations and laches. The District Judge in his opinion (pp. 91-92 of R.) adopted this view. If the grant is a perfect grant under a proper construction of the grant and the treaty, or a proper construction of the Acts of Congress passed to carry into effect the treaty, taken in connection with the terms of the grant and the treaty, the right of possession is vested in Teresa Rodriguez and her heirs and assigns certainly from the date of the Act of Congress confirming this grant and the appellant and those under whom it claims could acquire title by adverse possession against the appellees and those under whom they claim, and the appellees and those under whom they claim would also be barred in the right to maintain this action by the Statute of Limitation and their laches. The United States has no right of possession in this land

after the confirmation of the grant and had no possession under the laws of the United States. All these questions depend on the construction that will be placed by this Court on the grant, on the treaty, and on the said Acts of Congress.

ACT OF CONGRESS OF MARCH 3, A. D. 1807.

In the bill of complaint (p. 8 of R.) it is asserted by appellees that by the force and effect of the act of Congress of March 3, 1807, appellees and those under whom they claim were excluded from the possession of this land, and the United States had possession and the right of possession, and therefore the land was not taxable, and that appellant and those under whom it claims could acquire no title by adverse possession. It will be therefore necessary for this Court in determining the complainant's case made by its bill to construe this act of Congress. The District Judge in his opinion (p. 92 of R.) found and determined that prior to the issue of the patent the grantee, Teresa Rodriguez, and her representatives, could not have legally reduced this land to possession and in and by said ruling adopted the construction put by the complainants upon this act of March 3, 1807. This therefore is another Federal question directly raised by the bill and involved in this suit.

All of the Federal questions that we have above stated were raised by the appellees in the bill of complaint and directly passed upon and adopted by the District Judge in his opinion and were affirmed by the Court of Appeals in its judgment and decree appealed from herein. We submit that each and every of said matters make necessary a decision of these Federal questions in order to grant the relief prayed by the appellees in their bill of complaint and to establish their rights as set forth in their bill of complaint.

THE TAXABLE CHARACTER OF THE LAND BY STATE AUTHORITIES DURING THE TIME TITLE WAS CLAIMED BY THE UNITED STATES PRESENTS A FEDERAL QUESTION.

As stated in the opinion of the District Judge and affirmed by the United States Circuit Court of Appeals, the chief question in this case depends upon whether the property in question was subject to taxation by state authority prior to the issue of the patent by the United States in 1895.

Under all of the decisions of the United States Supreme Court, the taxable character of lands prior to the issue of a patent by the United States where title is claimed under the United States presents a Federal question which is subject to hearing in the United States Supreme Court. Consideration of some of the cases in this court in which these questions have been considered will disclose that they are treated as Federal questions and as rights arising under the laws of the United States. The case of *Hussman vs. Durham*, 165 U. S., 145, was a writ of error from this court to the Supreme Court of the State of Iowa. Suit was brought by one Durham in the State District Court in Iowa to quiet his title as against the defendant holding tax title. Judgment was rendered in his favor in the District Court and affirmed by the Supreme Court of Iowa. A writ of error was then taken from the United States Supreme Court to the Supreme Court of Iowa. A motion was made to dismiss the writ of error, and this Court used the following language:

> "A motion to dismiss was submitted by the defendant in error, but as the Supreme Court of the State held that the equitable title apparently conveyed by the proceedings in the United States Land Office in 1858 was of no effect, and the tax titles based thereon of no validity, it is apparent that a right claimed under the authority of the United States was denied and, therefore, this Court has jurisdiction."

Wisconsin C. R. R. Co. vs. Price, 133 U. S., 496, was a writ of error from the United States Supreme Court to the Supreme Court of Wisconsin. A suit was brought in the State Court to enjoin the collection of State taxes upon land claimed under grants from the United States to the Railroad Company.

Carroll vs. Safford, 3 How. 441 (U. S. Supreme Court), was a bill filed in the United States Circuit Court by complainant residing in New York against the County Treasurer of a county in Michigan to enjoin the sale of land for taxes.

Witherspoon vs. Duncan, 4 Wall. 210, was a bill of equity filed in the State Court of Arkansas. It was affirmed on appeal by the Supreme Court of Arkansas and brought by a writ of error to the United States Supreme Court.

Railway Co. vs. Prescott, 16 Wall. 603, was a bill filed to quiet title against defendant claiming under tax title and brought to United States Supreme Court by writ of error to the Supreme Court of Kansas.

In all of the above mentioned cases, the question of the taxable character of the property prior to the issue of a patent of the United States is treated as a Federal question.

In the case of *Spokane Falls, etc., Ry. vs. Ziegler*, 167 U. S. 65, action was brought in the State Court in the State of Washington and removed to the Circuit Court of United States. Judgment was rendered in favor of defendant in that court and the case was then taken by writ of error to the Circuit Court of Appeals of the Ninth Circuit and the judgment of the Circuit Court affirmed. The case was then taken to the United States Supreme Court by writ of error to the Circuit Court of Appeals. The plaintiffs claimed to be in possession of the lands under the laws of the United States and the defendant Railroad Company under the laws of the Territory of Washington. This Court held that this was a case of the plaintiff claiming title under the laws of the United States and the Railroad Company claiming by an act of

Congress and, therefore, the Federal question was prevented and the merits of the case were heard and determined.

See also *Doolan vs. Carr*, 125 U. S. 620. Jurisdiction was sustained on the ground that the controversy turned upon the validity of a patent from the United States under which plaintiff claimed title and which was denied by defendant.

See also

Cooke vs. Avery, 147 U. S., 375.

APPELLEES' BILL OF COMPLAINT STATES RIGHTS UNDER THE TREATY BETWEEN SPAIN AND THE UNITED STATES AND ALSO UNDER THE LAWS OF THE UNITED STATES, PARTICULARLY AS TO THE ALLEGED NON-TAXABLE CHARACTER OF THE LANDS IN QUESTION.

APPEAL LIES FROM THE UNITED STATES CIRCUIT COURT OF APPEALS TO UNITED STATES SUPREME COURT WHERE SUCH FEDERAL QUESTIONS ARE INVOLVED.

See *Cousin vs. Labatut*, 19 How 202, 15 L. Ed. 601. In this case it was decided that where the Laws of Congress, and the acts of officers executing them in perfecting titles to public lands, are drawn in question and construed that there existed a Federal question authorizing this Honorable Court to examine the judgment of the final appellate State Court. The same construction of the Act of Congress would apply giving a right of appeal from the judgment of the United States Circuit Court of Appeals to this Court.

The case of *Northern Pacific Ry. Co. vs. Soderberg*, 188 U. S. 526, sustains a right of appeal in an analogous case to the one above. In that case, this Court held as follows:

> "But to impress the attribute of finality upon a judgment of a circuit court of appeals it must appear that the original jurisdiction of the circuit court was dependent entirely upon adverse citizenship. That is not the case here. Plaintiff's bill does indeed set out a diversity of citizenship as one ground of jurisdiction, but as it appears that its title rests upon a proper interpretation of the Land Grant Act of 1864 as to the exception of non-mineral lands, there is another ground wholly independent of citizenship under that clause of Section 1 of the Act of 1888, 25 Stat. at L. 433, clothing the circuit court in the jurisdiction of all civil suits involving over $2,000 and arising under the constitution or laws of the United States."

A motion to dismiss the appeal was denied.

In the case of *U. S. Fidelity Co. vs. Bray*, 225 U. S. 205, 214, this Court sustained an appeal from a decree of the United States Circuit Court of Appeals in a case where the jurisdiction of a Circuit Court was invoked on the ground of diversity of citizenship and also under certain acts of Congress.

In the case of *Howard vs. U. S., 184 U. S.* 676, 681, an appeal was sustained in suit brought upon a bond of a clerk as a suit arising under the laws of the United States, although jurisdiction by reason of citizenship was also attempted to be alleged.

See also

> *Spreckels Sugar Refining Co. vs. McLane*, 192 U. S. 397, 405.

In the case of *Henningsen vs. U. S. Fid. & G. Co.*, 208 U. S. 404, it is held that, although diversity of citizenship was alleged in the bill, if the grounds of a suit and relief are based on statutes of the United States, which are necessarily elements of a decision for the lower courts, an appeal would lie to the United States Supreme Court to the United States Circuit Court of Appeals. The Court in its opinion (p. 4) uses the following language:

> "Diversity of citizenship was, it is true, alleged in the bills, but grounds of suit and relief were also based on the statutes of the United States, as from the discussion of the merits will be seen. Those statutes entered as elements into the decision of the Circuit Court of Appeals, and were necessary elements."

Where the cause of action is based on a statute of the United States, there is an appeal to the United States Supreme Court from the judgment of the Circuit Court of Appeals.

> *Chicago Junction Ry. Co. vs. Kane*, 222 U. S. 223;
> *Union Pacific Ry. Co. vs. Harris*, 158 U. S. 326.

The right to a writ of error from the United States Supreme Court to United States Circuit Court of Appeals is sustained in the case of *Florida Central R. R. Co. vs. Bell*, 176 U. S. 321.

In this last named case a right under the laws of the United States giving jurisdiction was asserted in the Circuit Court and the United States Circuit Court of Appeals and it was held by the United States Supreme Court that a writ of error would lie in such case to review the judgment of the United States Circuit Court of Appeals. This Court, in several cases, has called attention to the language of the judiciary acts of Congress to the effect that the judgment of the United States Circuit Court of Ap-

peals is not final except in cases where the jurisdiction depends entirely upon the opposite parties being citizens of different States and if there is other Federal jurisdiction arising out of questions and rights under the laws of the United States and treaties made with the United States, the right of appeal from the decree of the United States Circuit Court of Appeals exists although there may have been jurisdiction in the case by reason of adverse citizenship.

In addition to the cases cited above, see also

Sonnentheil vs. Moerlein Brewing Co., 172 U. S., 404, 405.

We insist that under all of the foregoing authorities the grounds on which the decree was made cancelling the deeds under which appellant claims title, as shown by the opinion of a District Court affirmed by the judgment of the United States Circuit Court of Appeals were rights claimed by the appellees under the treaty between Spain and the United States and under the laws of the United States and jurisdiction is, therefore, clear, giving a right of appeal from the decree of the United States Circuit Court of Appeals to this Court.

Mitchell, Governor, etc., of Florida vs. Furman, 180 U. S., 402. This case has been relied upon by appellees in their brief in support of the motion to dismiss. It is stated in their brief that the case at bar is exactly the converse of the Furman case above mentioned. It would seem, from an examination of the opinion, that the federal jurisdiction and the jurisdiction of an appeal from the United States Circuit Court to the Supreme Court of United States was sustained. The Court held as follows:

> "The pleadings, the evidence, and the master's report and opinion considered, we think that rights under the treaty were so far set up and relied on as to give jurisdiction to the Circuit Court and to justify an appeal from its decree directly to this court."

The case of *Northern Pacific Ry. Co. vs. Soderberg*, 188 U. S. 526, above referred to, directly sustains this jurisdiction.

THE APPELLEES SEEK TO ARGUE THE MERITS OF THE CASE ON THIS MOTION.

In the brief of the appellees in support of this motion, they have discussed many questions involving the merits of the appeal and, among others, the character of the grant from Spain to Marcos, and cited authorities in reference to same, also their contentions as to the necessity of a survey of the grant and the amount of land included in a league square, also the nature of this patent. We submit that on this motion it is not proper to discuss the character of the title or the merits of the case, and we shall not undertake to cite authorities as to the nature of this grant or the necessity or want of necessity of a survey or patent or any other question involving the merits. This Court has held in a number of cases that it will not consider the merits of the case on a motion to dismiss. The bill of complaint in this case, all of the pleadings, the judgment and decision of the District Court and that of the United States Circuit Court of Appeals affirming the final decree of the District Court certainly disclose the necessity for considering a number of Federal questions in the determination of this case. Therefore, we insist that the jurisdiction in this Court to entertain this appeal clearly appears and that the motion should be denied.

ALLEGATIONS OF APPELLEES' BILL THAT THEY AND THOSE UNDER WHOM THEY CLAIM WERE EXCLUDED FROM POSSESSION BY THE UNITED STATES AND THAT APPELLANT AND THOSE UNDER WHOM IT CLAIMS COULD NOT ACQUIRE TITLE BY ADVERSE POSSESSION UNTIL PATENT ISSUED PRESENTS A FEDERAL QUESTION.

In the bill of complaint in this case in paragraphs Fifteenth, Seventeenth, Twenty-fourth and Thirty-sixth, the appellees assert that no right or title by adverse posses-

sion of these lands could be claimed by appellant and those under whom it claims, because appellees allege that no title or right of possession existed in the appellees or those under whom they claim prior to the issue of the patent and that, during that period, the United States had the title and right of possession and claimed the exclusive ownership of this land. The District Judge and the U. S. Court of Appeals adopted this view of the case (see page 92 of record) and overruled and denied all of the claims of title of the appellant under the Statutes of Limitation and under adverse possession. These claims of the appellees and their bill and this ruling of the Court and its opinion are based upon a construction of the right and title of the United States and the right and title of appellees under the laws of United States during the period from the ceding of the State of Florida by Spain to the United States to the date of the patent, June 26, 1895. This decision is based upon the contention of appellees that the grant was an inchoate title and was not confirmed as a full and perfect title by Act of 1828 and that a further survey and confirmation of the survey and a patent was necessary to vest title and right of possession in the appellees and those under whom they claim. These are rights claimed under the treaty and under the laws of the United States and present for decision in this case Federal Questions which are also subject to review in this Honorable Court.

On account of the existence of all of the Federal questions above referred to and appearing in the appellees' bill of complaint and decided by a District Judge and affirmed by the United States Court of Appeals, we insist that an appeal lies in this case from the judgment and decree of the United States Circuit Court of Appeals to this Honorable Court. The construction contended for by appellees of the Grant and the various acts of Congress referred to in the bill, the treaty between the United States and Spain, the action of the United States Land Department and the decision of the Secretary of the Interior and the effect and construction of a patent from the United States are necessary to the case attempted to be made by

the appellees. Unless the Court below had adopted the constructions insisted upon by appellees, their title in this suit could not and would not have been maintained and the appellant would have been held to have a valid title under the various sales of these lands for nonpayment of taxes and through the many years of actual adverse possession under said tax deeds by appellant and those under whom it claimed title. The appellees' right to have these deeds cancelled under which appellant claims title and the appellees' right as against the adverse possession of appellant and the effect of the Statutes of Limitation were all dependent on these claims made by appellees under the laws of the United States. We, therefore, submit that this motion to dismiss the appeal should be denied.

ARGUMENT ON THE MERITS.

AFTER CONFIRMATION OF THE GRANT BY CONGRESS MAY 23, 1828, IT WAS SUBJECT TO TAXATION, AND, THEREFORE, WAS PROPERLY SOLD IN 1852 FOR NON-PAYMENT OF TAXES DUE FROM 1845 TO 1851.

The court below in this case in and by its decree adjudged that the deeds from John Simpson, Sheriff, to John Starke, dated the 5th of July, 1852, and from Robert C. Partin, Tax Collector of Orange County, Florida, to William Mills, dated the 23d of April, 1872, were based upon assessments prior to the issue of patent by the United States on the 26th of June, 1895, and while the validity of said Grant was denied by the United States through its duly organized Land Department, and, therefore, held the said deeds void. The court based its decision upon the ground that until a patent had issued the land was not subject to taxation because the validity of the Grant was before the Department until the patent issued. The record shows that the patent itself recites this Grant was confirmed by Act of Congress of 23d of

May, 1828. (See page 978 of record.) The plats of the survey of the township, including this Grant, show the approval of the survey by B. A. Putnam, Surveyor General, the 20th of June, 1851. See defendant's Exhibit 14, 37 and 38, pages 1027, 1029, 1030. It thus appears that the Grant was confirmed May 23, 1828, and if any survey was necessary, had been surveyed and the survey approved in 1851. From the date of the confirmation of the Grant it was immaterial whether any dispute existed thereafter in the Department in reference to the Grant or not. The United States finally recognized the Grant as having been a perfect, complete and confirmed Grant from May 23, 1828, and after that it was subject to taxation. The appellees have attacked the power and authority of the State of Florida to tax this Grant on the ground that it was not subject to taxation. This is one of the most important questions in the case, which we will now discuss.

The evidence shows that the lands were surveyed and segregated from the public domain. The boundaries of the township were established in 1845. See plat of survey, defendant's Exhibit "1." The Grant was confirmed on May 23, 1828. The section of this Act confirming the Grant required the claimant to locate the Grant. It will be presumed at this date that after this confirmation claimants located the Grant on the ground and furnished a statement of same to the Surveyor General.

Section 12 of the Act of February 8, 1827, which applies to the Grant in question required the claimants to cause the same to be connected with the township lines of the public surveys and to furnish to the Surveyor of Public lands in Florida such information as would enable him to exhibit accurately the said claims on his township plats. It thus became the duty of the claimants to make a survey of this Grant and it will be presumed that they made such survey prior to 1851 and that Williams in 1851 made his survey from the information furnished by claimants. If the survey was necessary to segregate the land from the public domain so as to make it taxable, it will be presumed at this date that said survey had been made by the claim-

ants themselves, or that the Grant had been located prior to 1845 and was assessed upon such prior location or survey.

NO SURVEY IN FACT WAS NECESSARY TO RENDER THIS LAND TAXABLE.

The land is described in the Grant and the Grant was confirmed by Act of Congress the 23d of May, 1828. Congress did not require a survey before confirming the Grant but confirmed it as described in the Grant. The deed from Simpson, Tax Collector, made in July, 1852, states that he levied upon a certain tract of land supposed to belong to Teresa Rodriguez, and he describes it as lying in Section 37, Township 19, Range 28, and recites that he sells the right, title and interest of the said Teresa Rodriguez and others in and to said tract of land. It is quite apparent that when this deed was made on the 5th of July, 1852 the tract was known as the Teresa Rodriguez Grant, and its location was known to the Sheriff and Tax Collector of said county. The description of the Grant as contained in the Grant itself and as confirmed by Act of Congress rendered that land subject to assessment for taxes as the Teresa Rodriguez Grant. The Grant is dated the 18th of October, 1815, and reported for approval by the Commissioners December 26, 1825. It was an undivided Grant and describes therein certain lands. Williams simply surveyed the land described in the Grant. He ascertained the land either from the description of the Grant or from the previous location and survey of it by the claimants as required by law. In either event the original Grant sufficiently separated it from the public domain to render it taxable or the survey made by the claimants upon which Williams acted rendered it taxable.

U. S. vs. Arredonda, 13 Peters, 130.
U. S. vs. Moreno, 1 Wall., 400.

Freemont vs. U. S., 17 How., 542.
U. S. vs. Vaca, 18 How., 556.
Cousin vs. Labatut, 19 How., 282.

No other survey was necessary. The original Grant so far as appears in this record sufficiently describes the land and segregated it from the public domain.

The Deputy Surveyor General, M. A. Williams, surveyed the Grant and evidently had no difficulty in locating it from the description of the Grant so far as is shown by this record.

During the years 1845 to 1852 inclusive the Grant was a well known body of land, and in 1852 was sold for the nonpayment of taxes as the Rodriguez Grant.

The title to this Grant passed by the Grant from Spain, and the description in the Grant sufficiently identifies it, and thereby segregates it.

If the survey was necessary to segregate it, when it was made in 1851, it related back in legal effect to the date of the Grant or its confirmation by Congress in 1828.

THE GRANT WAS SUBJECT TO TAXATION BY THE STATE OF FLORIDA AS A SPANISH GRANT DURING EACH OF THE YEARS FROM 1845 TO 1851 INCLUSIVE WITHOUT A SURVEY BY THE UNITED STATES, AND COMPLAINANTS CANNOT SET UP WANT OF SURVEY AS GROUNDS FOR SETTING ASIDE SALE OF THE PROPERTY FOR TAXES DURING THAT TIME:

The Act of Congress, Section 12 of the Act of February 8, 1827, required the claimants to cause the same to be connected with the township lines of the public survey and to furnish to the Surveyor of Public Lands in Florida such information as would enable him to exhibit accurately the said claims on his township plats.

Section 1 of the Act of May 23, 1828, requires the

claimant to locate the claim in quantity not less than one league square.

It would be presumed that M. A. Williams in 1851 when he made the survey of the Grant made same as soon as the claimants had furnished the information upon which the survey could be made.

It was the duty of claimants to have required survey to have been made earlier, and they cannot plead their want of diligence in that matter as the reason why the lands should not be charged with taxes to support the Government.

THE GRANT WAS A PERFECT GRANT OF COMPLETE TITLE AND NO SURVEY WAS NECESSARY TO SEGREGATE IT FROM THE PUBLIC DOMAIN. THE GRANT ITSELF SEGREGATED THE LAND FROM THE PUBLIC DOMAIN:

The survey when made in 1851 related back in legal effect to the date of the Grant in 1815, or at least to the date of its confirmation by Congress May 3, 1828, and it was, therefore, subject to taxation during the years 1845 to 1852 inclusive.

It will be presumed that the Grant had been surveyed by the claimants themselves prior to M. A. Williams' survey in 1851, and duly located, and that Williams used such location as the basis of his survey, and it was, therefore, subject to taxation as a Grant from the time of such location and survey by the claimants.

While the American State Papers state no survey was furnished the Commissioners, it may be presumed after this lapse of time that a survey was made at some time prior to 1851, and under Section 7 of the Act of February 8, 1827, the keeper of the public archives furnished same to the Surveyor of public lands and on which the Williams' survey was based.

A perfect Grant is sufficient title to sustain the taxation thereof without the issue of patent and it will be

held that the description in the Grant was sufficient to enable the surveyor to locate the same, and, therefore, the Grant itself identified the property and it was subject to taxation.

WHERE PARTY CLAIMING TITLE TO PUBLIC LANDS HAS COMPLIED WITH THE CONDITIONS ENTITLING HIM TO A TITLE, HIS TITLE IS SUBJECT TO TAXATION:

If the party claiming title to the Grant has the legal or equitable title, it is liable for taxes.

If the Government has ceased to have any beneficial interest in the property it is subject to taxation.

When an entry has been made, the land is subject to taxation, although the patent is not issued.

Where the patent issues on the original proofs of entry, it relates back to the original claim of title and the lands are taxable from the date of the first entry.

The first entry in this case was the date of the complete or perfect Grant, and certainly the date of its confirmation May 23, 1828, by the Act of Congress.

CHARACTER OF TITLE CONVEYED BY THE GRANT:

The Grant was not an inchoate right or permit to occupy the land. The language of the Grant is one of complete title.

See Grant and presentation of same by Teresa Rodriguez shown by American State Papers. (Pages 114 to 116, 216, 217, 218, 969 to 975 of record.)

Report of the Board, dated December 16, 1825, recommending Grant to Congress for confirmation.

THIS GRANT WAS ONE IN CONSIDERATION OF MILITARY SERVICES AND WAS NOT BASED UPON OCCUPATION OF THE LAND, AND IS A GRANT IN FULL TITLE, AND THE PETITION FOR THE GRANT WITH THE SAID GRANT DESCRIBES IT DEFINITELY:

The patent under which complainants claim title recites the presentation of this claim by Teresa Rodriguez and the approval of same by Act of Congress May 23, 1828, and the survey in January 1851 by M. A. Williams under contract with Benjamin Putnam, Surveyor General.

SURVEY BY WILLIAMS IN 1851 RELATED BACK IN LEGAL EFFECT TO THE DATE OF THE GRANT IN 1815 OR TO THE DATE OF ITS CONFIRMATION MADE BY CONGRESS MAY 23, 1828.

The survey of Williams describes the Grant by courses and distances and indicates it by exterior lines, but it necessarily must be the same land which is described in the original Spanish Grant. Williams as Deputy Surveyor General would have no authority to cut out of the public domain fifty-five hundred acres of land for the claimants. His authority was to survey and plat and describe the land as described in the Grant or as previously located and surveyed by the claimants themselves under the Acts of Congress, and it is presumed that he made his survey on information furnished from one or both of these sources. The description must have been sufficient, therefore, either in the Grant or in some previour survey prior to Williams' survey of 1851 to enable him to locate the Grant, and his survey would, therefore, only evidence that the Grant was a well known and well described tract of land in 1845 to 1851 inclusive. This being true, it was subject to taxation. The Williams survey of 1851 only reaffirmed or made a record of the loca-

tion of the Grant as it already existed, and such survey related back in legal effect to the date of the confirmation of the Grant by Congress in 1828.

ALLEGED INDEFINITENESS OF DESCRIPTION IN THE GRANT.

We insist that the description in the Grant is sufficiently certain in itself for a Surveyor to find it, and, therefore, it is subject to taxation. The description certainly was sufficiently certain for M. A. Williams to survey it in 1851, and on that survey patent was based, and appellees claim under that survey and cannot be held to dispute it or question it.

The Grant was subject to Taxation by the State of Florida as a Spanish Grant during each of the years from 1845 to 1851, inclusive, without a further survey by the United States, and complainant cannot set up a Want of Survey as ground for setting aside the sale of the property for taxes during that time.

The Act of Congress, Section 12 of the Act of February 8, 1827, U. S. Statutes at Large, Vol. 4, page 202, required claimants to cause the same to be connected with the boundary lines of the public survey and furnish the Surveyor of Public Lands in Florida such information as will enable him to exhibit accurately the said claims on his township plats.

Said Sec. 12 of said Act required the Surveyor of Public Lands, on information furnished him by the claimants, to exhibit said claims on the township plat. The survey by Williams made in 1851 and approved by Surveyor General Putnam in 1852 referred to in this brief complied with this section of this Act.

Section 3 of the Act of May 3, 1828, U. S. Statutes at Large, Vol. 4, p. 284, provides for the confirmation of Grants and further provides: "Confirmation authorized by this Act shall operate only as a release of any claim had by the United States and not to affect the interest of third persons."

The first section of the Act confirms the claims therein mentioned. This Act does not require the issuance of any Patent to the grantee. Section 8 of the Act of February 8th, 1827, U. S. Statutes at Large, Vol. 4, p. 202, refers to the issue of Patents to lands the Grants of which have already been confirmed, but do not include Grants in excess of 3500 acres mentioned in the first section of the Act.

The Act of January 23, 1832, U. S. Statutes at Large, Vol. 4, page 496, provides only that Patents may issue to the confirmees or to the assignees or present owner when the land has been sold or transferred since the confirmation of the title, and also provides for the issue of Patents upon the production of satisfactory proof of the death of the confirmee to his heirs or legal representatives, or upon the production of a chain of title from the confirmee to the assignees of the confirmee. Neither of these statutes apply to the confirmation of the Grant involved in this case.

Under the Act of May 23, 1828, U. S. Statutes at Large, Vol. 4, p. 284, the Grant was confirmed by the force and effect of the Act; and under Sec. 3 of the Act the confirmation authorized by the Act operated as a release of any claim held by the United States. On that date (May 23rd, 1828) by force of the Act a Grant was confirmed directly to and in favor of Teresa Rodriguez, the petitioner who filed her petition with the Commissioner referred to in the record in this case, and such confirmation operated with the Act of May 23rd, 1828, not only to confirm to her the Grant from Spain mentioned in her petition, but to release to her any claim of the United States.

AFTER THIS LAPSE OF TIME AND WITH THIS DUTY UPON THE CLAIMANTS TO SURVEY AND LOCATE THE GRANT ON THE GROUND, IT IS APPARENT THAT THE WILLIAMS SURVEY WAS MADE FROM THE PREVIOUS LOCATION OF THE GRANT BY THE CLAIMANTS OR FROM INFORMATION FURNISHED BY THEM.

Section 1 of the Act of May 23, 1828, also required the claimants to locate the claim in a quantity not less than one league square. This is the Act under which the Grant was confirmed and upon which confirmation it was subsequently patented. If this location was made as required by law before 1845, it is clear that the land was taxable from the time the location was made. The deed from John Simpson, Sheriff and ex-officio Tax Collector, to John Starke describes the land as the interest of Teresa Rodriguez or as the land of Teresa Rodriguez, and also as fractional Section 37, and the Grant had been surveyed by Williams in 1851 and had been given the description as Section 37, but it evidently was previously known as the Teresa Rodriguez Grant, and there appearing no evidence to the contrary it may conclusively be presumed now that it was assessed in 1845 to 1850, inclusive, as the Teresa Rodriguez Grant, and probably assessed in 1851 also as Section 37 or located as fractional 37 by the claimants in some survey made by them prior to the Williams Survey in 1851 and which was adopted by them. Under the United States Government Survey system, fractional sections above the regular sections from 1 to 36 always begin to number at 37, and the Sheriff or the Tax Assessor may have assessed it as Section 37 knowing that that would be its fractional number whenever officially surveyed. In any event, without positive proof that it had never been located or surveyed by the claimants or any one by their authority and had never been assessed prior to 1851, and we have no such proof in this case, it will be presumed now that it was duly surveyed prior to 1851 and prior to 1845 and that it was duly assessed for the years 1845 to 1851, inclusive, covered by the sale and deed made by Simpson, Sheriff and Tax Collector, to Starke in 1852.

It is urged by the complainants that it had not been segregated from the public domain prior to the alleged confirmation of the Williams survey by W. H. Milton as Surveyor General in 1894, mentioned in the patents. As the law required the claimants to locate their claim and

also to connect it with the township lines and also to furnish the information to the Surveyor General upon which it could be put upon the public plats, they cannot now complain that it had not been previously surveyed. It was the duty of the claimants in any event to have required the survey to have been made earlier than 1851 and they cannot now plead their own want of diligence in not having the lands separated by a survey from the public domain as a reason why the lands should not be charged with its due proportion of the taxes to support the Government. Claimants could not retain full title to this Grant and take no action to have it surveyed and still maintain it was not subject to taxation. Even if the Grant were assessed in 1845 to 1850, inclusive, and prior to the survey of 1851 of Williams, as the Teresa Rodriguez Grant, it could properly be described by Simpson, Tax Collector, in the deed to Starke as Section 37 because that description and the description of the Theresa Rodriguez Grant would mean one and the same thing and describe one and the same tract of land.

THIS GRANT WAS A PERFECT GRANT OF COMPLETE TITLE AND NO SURVEY WAS NECESSARY TO SEGREGATE IT FROM THE PUBLIC DOMAIN.

The terms of the Grant and the description in the Grant in and of themselves segregated and separated this land from the public domain so as to make it taxable. This Grant has a description which is contained in the petition of Marcos asking for the Grant and which is adopted in the order granting title to the land as prayed in the petition. The prayer of the petitioner Miguel Marcos was to grant him "in absolute property fifty-five hundred acres of land which are vacant on the two banks of the creek which comes from the west and discharges itself into the River St. Johns about two miles to the north of the lake known as Long Lake and the mouth of said creek called Big Spring." The decree made on the pe-

tition was as follows: "That there be granted to the interested, *on the terms which he solicits the lands indicated in this memorial* in virtue of the several royal orders which authorize to that effect; that he may be able to prove this concession in any event that the necessary certificate be delivered to him from the Secretary's office." (Signed) "Estrado."

It will be seen this was a Grant of absolute property by its terms. It is not conditional and it describes a certain tract of land. The acreage is given as fifty-five hundred acres. The class of land is given, to-wit, land which was vacant at that time. The description was one which a surveyor having access to the records of the grants and surveys of lands already made under Spanish authority in that neighborhood could locate. It was to be fifty-five hundred acres of land on the two banks of a certain creek. The creek is described by the mouth of it being called "Big Spring" and it is the creek which discharges itself into the River St. Johns, about two miles to the north of the lake known as Long Lake, and the direction of the creek is given as coming from the west and emptying into the St. Johns River. The plat annexed to the Grant and which is the plat made by M. A. Williams, a copy of which is contained in defendant's Exhibit "1," in the United States Land Office shows the location of the Grant is on both sides of this creek and that the creek flows in an east and west direction through the Grant. At any rate, from this description, with such information as must have been furnished to him by the claimants under the law, the Grant was located according to its terms.

This being a perfect grant in itself of complete title and being a well known tract of land under the name of Teresa Rodriguez Grant, the Grant as such was subject to taxation without further survey.

IF A SURVEY WAS NECESSARY, THE LAND MUST HAVE BEEN DULY SURVEYED OR IDENTIFIED PRIOR TO 1845.

It will be presumed that this Grant had been surveyed by the complainants themselves and located by them prior to the M. A. Williams survey in 1851 and that Williams used such location as the basis of his survey and it was, therefore, subject to taxation as a Grant from the time of the location by claimants or from the time that they had located it as required by the Acts of Congress.

The survey of Williams made in 1851, if necessary to segregate it from the public domain, related back at least to the date of the confirmation of the Grant, to-wit, May 3, 1828, and if the property were assessed for taxes as the Rodriguez Grant between May 3, 1828 and 1851, the date of the Williams Survey, such assessment would be valid. The claimants knowing that their land was assessed for taxes even prior to a formal survey in 1851 and that the legal effect of the survey would be to complete their evidence of title, could not permit it to be sold for taxes because the survey, when made, would operate to perfect such tax sale and would relate back to the date of the confirmation of the Grant. The Grant was, therefore, subject to taxation from the years 1845 to 1852, inclusive.

While the American State Papers state that no Spanish survey was furnished to the Commissioners, such survey may in fact have been made during the existence of the Spanish authorities and the evidence of it not produced before the Commissioners but subsequently produced to the Surveyor General. Such survey would then have supported the assessment of the property for taxes. It will be presumed after this lapse of time that a Spanish survey was made prior to the confirmation of the Grant, evidence of which was furnished to the Surveyor General of Florida after the confirmation of the Grant, and that under Section 7 of the Act of February 8, 1827, the keeper of the public archives furnished such record to the Surveyor of the public land and that on such Spanish survey the Williams survey was based.

This Grant being a perfect and unconditional title vested sufficient title in grantees to make it subject to tax-

ation and to sustain taxation thereon without the issue of a patent.

The treaty of the 22nd of February, 1819, in and of itself recognizes and approves the grants of land made by Spain. In the opinion of Chief Justice Marshall in U. S. vs. Percheman, 7 Peters, 51, it was held that the Grants were ratified and confirmed by force of the treaty itself. It was further held that the Act of Congress of May 8, 1822, appointing Commissioners was for the purpose of ascertaining the claims and title to lands within the territory of Florida. The object of the appointment of the Commissioners was the *ascertainment* of such claims and title. The treaty referred to is one ceding Florida from Spain to United States.

In the case of U. S. vs. Arredondo et al., 6 Peters U. S. Supreme Court Reports, 691, it was also determined that the effect of the treaty was to confirm grants made prior thereto. It, therefore, appears that prior to the confirmation of the Grants by Congress that it was confirmed by the terms of the treaty.

See also

U. S. vs. Kingsley, 12 Peters, 476.
U. S. vs. Clark, 16 Peters, 228.

No survey is necessary to the validity of the Grant. The want of survey does not interfere with the title of the grantee.

See

U. S. vs. Arredondo, 13 Peters, 133.

THESE SPANISH GRANTS AND CONCESSIONS IN FLORIDA, WHERE THEY HAVE BEEN CONFIRMED, HAVE ALWAYS BEEN RECOGNIZED AS SUFFICIENT PROOF OF TITLE WITHOUT THE ISSUE OF A PATENT, AND THEY ARE SUFFICIENT SHOWING OF TITLE UNDER WHICH TO SUSTAIN ADVERSE POSSESSION.

See

McGruder & Logan vs. Roe et al., 13 Fla., 603, 609, 611.

McGee vs. Doe, etc., 9 Fla., 383, 392, 393.

If the confirmation of the Grant were necessary subsequent to a survey, this confirmation was made by the Act of Congress of May 23, 1828. The third section in that Act provides that "confirmation authorized by this Act shall operate only as a release of any claim had by the United States, and not to affect the interest of third persons." This Act does not provide for the issue of a patent but the confirmation by the Congress operates as a release of claims of the United States. The survey was not necessary to the title but the confirmation of the Act of Congress fully recognized the Spanish Grant.

WHERE THE GRANTEE CLAIMING TITLE TO PUBLIC LANDS HAS COMPLIED WITH THE CONDITIONS ENTITLING HIM TO A TITLE, HIS TITLE IS SUBJECT TO TAXATION.

In this case the grantee is entitled at any time to a patent as a mere evidence of the confirmation of his Grant already had by the Act of Congress but the patent did not add anything to his title, and the title, is therefore, subject to taxation. When the grantee has complied with the conditions, upon the performance of which he is entitled to a patent, and the Government has ceased to have any interest therein which would justify it in withholding the patent, he is the beneficial owner of the lands and they are subject to taxation as his property.

Wisconsin, etc., R. Co. vs. Price Town, 133 U. S., 496.

Witherspoon vs. Duncan, 4 Wall., 210.

N. P. R. R. Co. vs. Patterson, 154 U. S., 130.

Carroll vs. Safford, 3 How., 441.

Weenona & St. Paul Land Co. vs. Minn., 159 U. S., 526.

Hussman vs. Durham, 165 U. S., 144.

Maish et al. vs. Ariz., 164 U. S., 599.

The laws of Florida in force in 1851 and 1852 authorized the levy for taxes on even the equitable or possessory right and the sale of such right for nonpayment of taxes.

Thompson's Digest, Laws of Florida, page 91, Subdivisions 5 and 6, Sec. 2, and Subdivision 3 of Sec. 4, page 96.
(Copies of foregoing portions of Thompson's Digest are appended to this brief.)

THIS GRANT IS NOT AN INCHOATE RIGHT OR PERMIT TO OCCUPY THE LAND, BUT IS A COMPLETE AND PERFECT TITLE.

The language of the Grant is one of complete title. We have already referred to the petition of Miguel Marcos for this Grant and the order upon the petition. The Commissioners reported the Grant for confirmation by their report dated December 16, 1825. They report there were no conditions attached to the Grant. The Grant was one in consideration of military services and was not based upon occupation of the lands, and by its terms is a grant in full title. Petition for the Grant describes definitely the lands in question. It was competent for the Spanish government to grant lands in consideration of military services. The failure of the Surveyor General to make a survey did not affect the title under this Grant.

WE INSIST THAT THE GRANT WAS A COMPLETE AND PERFECT TITLE AND CERTAINLY TOOK EFFECT FROM THE DATE OF THE ACT OF MAY 23, 1828.

U. S. 4th Statutes at Large, 284.

The first section of this Act confirms the Grant without any further location of same because it was less than 1 league square, as decided by the Secretary of the Interior in his opinion and order referred to in the bill of complaint as dated February 12, 1894. According to the

opinion of the Secretary one league square mentioned in this Section of the Act of May 23, 1828, means 6,002.50 acres on the basis of the French Unit of measure known as an arpen or arpent. Also that if the league square were based on English measure or 2.45 English Statute Miles it would amount to 1.19 square miles or 7,519 acres.

This Grant was a perfect one by its own terms and was recognized by the Act of Congress of May 23, 1828 confirming the Grant and recognized as a known tract of land. The description in the Grant must have been deemed sufficient. It was confirmed without a survey. Section 12 of the Act of February 8, 1827, requires the holders of such claim in effect to survey the claims themselves and furnish to the Surveyor of public lands in Florida the location and survey of their claim. It will be presumed that he did this and that the survey of Williams made in January, 1851, was of a well known and well defined tract. Defendant's Exhibit "1" shows the township was surveyed in 1847. The boundaries of the township were run in 1845. This Grant was surveyed in 1851 and approved June, 1851, by B. A. Putnam, Surveyor General. The Grant had evidently been surveyed by the complainants prior to 1845 and the survey of Williams in 1851 was based on such prior information, and this survey of Williams is the one adopted in the patent and made a part thereof.

The Grant was sufficiently located from 1845 to 1852, inclusive, and the title to same was in the Spanish grantee, and, therefore, it was subject to taxation.

The description of the Grant in the deed shows that it was known as the property of Teresa Rodriguez.

APPELLEES' CONTENTION AS TO NATURE OF THIS GRANT IS UNSOUND.

It is contended by counsel for appellees in their brief filed in this cause that this Grant was conditional. This is not correct. The Grant was one in consideration of Military services performed by Miguel Marcos, and no prior

or subsequent settlement or occupation was necessary to perfect title to such lands.

A similar Grant is involved in the case of U. S. vs. Percheman, 7 Peters, 51, 53. That Grant was based upon Military Services and no proof of occupation or settlement was required, and is sustained as a Grant in full title confirmed by the treaty. The language of petition of Miguel Marcos for this Grant, found on page 116 of the record is "to grant him in *absolute property* 5,500 acres of land," etc. The order is as follows: "That there be granted unto the interested *on the terms which he solicits* the lands indicated in this memorial, etc." The language of the Grant is, therefore, in absolute property. The language of the Grant in the case of United States vs. Percheman, 7 Peters, 53, is a Grant as follows: "I do grant him the two thousand acres of land which he solicits in absolute property in the indicated place." This Grant is signed by "Estrado." The Grant to Miguel Marcos involved in this suit is also signed by "Estrado." He must have been familiar with the services rendered, and the nature and character of the orders authorizing the Grant, and the conditions, if any, upon which the Grant should be made. These Grants appear to be in substance the same and based upon the same class of services. No other or subsequent title or order or Grant was made in the Percheman case and the title was not treated as inchoate but was held to be a perfect title. In the report of the Commissioners, dated January 21, 1826, found on page 971 of the record, it was stated that these Grants in Report No. 3 "comprehends claims exceeding thirty-five hundred acres, titles to which were found amongst the public archives of the country, and are ascertained by the Commissioners to be valid Spanish Grants, and reported accordingly to Congress for confirmation." Among other purposes mentioned in this report for which land was granted are Military Services, page 972 of record, and according to that report the Governors of the provinces were permitted to exercise considerable discretion in the making of such Grants. In

the reports of the Commissioners, dated December 13, 1827, 5 Vol. Am. State Reps., page 403 (Gales & Seaton's Ed.), the report refers to Grant for Military Services during the disturbances of the provinces of 1812. This report also states that Grants for lands for Military Services vary from other Grants as to the condition in reference to cultivation and occupancy. It is also stated that where the Grant is for Military Services, the conditions for the Grant have already been performed, and the Grant, whether by concession or royal order, vests in the grantee a fee simple without danger from abandonment or want of cultivation.

It is said in brief of counsel for appellees that this Grant was but an inchoate right, needing the performance of conditions. We think the answer to all this contention is that these questions were settled by the Grant itself and the report of the Commissioners reporting this Grant as a valid Grant, and reporting it favorably for confirmation, and by the Act of Congress confirming it. The report was that there were no conditions attached to the Grant, and on that basis it was confirmed by Congress. The Commissioners must have ascertained that the grantee was entitled to the Grant and that it was an unconditional Grant.

In the case of U. S. vs. Percheman it was urged that that Grant was void because the order of the 29th of March, 1815, only authorized such Grants not to exceed one hundred acres to the head of the family. The Percheman Grant was for two thousand acres. It is true in that case Percheman was mentioned by name in the order but the court found and held as follows: "It may be added that other claims under the same royal order for the same quantity of land (that is, 2,000 acres) have been admitted by the Receiver and Registrar and have been confirmed by Congress," so that it appears that the practice was not to limit the amount of land even under that order, as contended for by counsel for appellees. In addition to this, it cannot be known at this time what the number of the family or slaves of Marcos was, and after the

making of the Grant and the confirmation of same it will be presumed that he made the proof of facts necessary to entitle him to the number of acres granted. In the report of Commissioners above referred to of December 13, 1827, it is distinctly determined that occupancy or settlement was not a condition of Grants for Military Services, and such Grant is of complete title, and no subsequent or second title is necessary. It is plain, therefore, that this Grant by its own terms is in absolute property, and being for Military Services it is unconditional and is in itself a Grant of full title.

It is further urged by appellees that the description in this Grant was too vague to make it a complete Grant. The language of the Grant is sufficiently definite to be located, and that is certain that can be made certain. The Surveyor of the United States found no difficulty in locating it in 1851, and the law put the duty on the appellees to locate it certainly from 1827 to 1848. Even after 1848, it was still the duty of the claimant to have furnished the Surveyor General with the information on which to connect up such claims with the public surveys as provided in Section 12 of the Act of February 18, 1827, Volume 4, Statutes at large, page 202, and Section 1 of the Act of May 23, 1828, Volume 4, page 284, and Section 7 of the Act of May 26, 1830, Volume 4, Statutes at large, page 405. It was also the duty of the claimants in cases where the Grant exceeded thirty-five hundred acres to present these claims to the Judge of the Superior Court in the said District in which said lands lay in the territory of Florida, to be decided and passed upon as provided in Section 6 of the Act of May 23, 1828, and Section 4 of the Act of May 26, 1830. This right to have the validity and extent of said Grant tested in the said courts was also extended by Act of Congress of June 22, 1860, and further extended until June 10, 1875, by an Act of Congress approved June 10, 1872. The claimants could also have presented the questions involved as to the extent of this Grant to the Interior Department long before 1889, when the correspondence filed in the record shows that it was

presented by counsel to the Land Department and patent demanded. See page 844 of the record.

It was further the duty of the appellees or those under whom they claim to have either brought an action of ejectment against John Starke, to whom the deed was made by Sheriff in 1852, or against Powell, who went into possession of the property in 1872, and such action could have been maintained upon the Grant made to Marcos and the confirmation of same by the Act of Congress of May 23, 1828, and the survey made by Williams in 1851, approved by Benjamin Putnam, Surveyor General. The claimants further were entitled and had a right at any time when the property was attempted to be sold for taxes in 1852 to have filed a bill either to enjoin said sale or afterwards to set aside said tax title based upon the title of appellees or those under whom they claim under the said Grant and said confirmation by Congress thereof and the survey thereof above mentioned. Even before patent issues, the party entitled to a patent has an equitable title, and a bill may be filed by the holder of an equitable title to cancel or set aside clouds upon said equitable title, particularly if same interferes with the obtaining by the party holding the equitable title of the patent.

In the case of Van Wyck vs. Kneaveles, 106 U. S., 360-370, it was held that where the United States had erroneously issued a patent to lands to which a railroad company was entitled that a bill in equity could be maintained by the assignee of the rights of the railroad company against the holder of a patent to cancel same. The court uses this language:

> "The existence of the patent, therefore, embarrasses the assertion of the complainant's rights, that is, it prevents him from abtaining a strictly legal title which would enable him to recover possession of the premises in an action at law. The existence of the patent also creates a cloud upon the title of land."

And the right of the complainant holding such equitable title or right to a patent is sustained in said above mentioned case. In fact, an equitable title is always sufficient upon which to base a bill filed to cancel some cloud upon same if it is certain and definite.

See Sloan vs. Sloan, 25 Fla., 53.
Frost vs. Spitley, 121 U. S., 552-558, L. Ed. 30, p. 1010.
Carroll vs. Safford, 3 How., 441.

A bill, therefore, might have been filed by appellees or those under whom they claim to cancel and set aside these tax deeds at any time after the same were executed and recorded. The appellees and those under whom they claim did not take any action apparently in reference to this Grant from the time it was presented to the Commissioners in 1825 up to the proceedings in the Land Department in Washington, as shown by the record, unless it may be that they furnished some information to the Surveyor General prior to 1851 and on which the survey of 1851 was based, although the record does not disclose what that information was nor whether the claimants had any survey of the land made, upon which the United States Surveyor's survey of 1851 was based.

CASE OF MITCHELL VS. FURMAN, 180 U. S., 402-404.

This case is relied upon by appellees' counsel in their brief to support their contention as to the nature of the Grant involved in the case at bar and the character of the title under said Grant. The case of Mitchell vs. Furman is entirely different in its facts from the case at bar. In the Furman case, the Grant was one of ten thousand acres, and plainly exceeded one league square, and, therefore, it was never confirmed by the Act of Congress of May 23, 1828. In the Furman case the claimants insisted in their bill that the title arose from the Grant without

any confirmation. The court in its opinion decided as follows:

> "It must be remembered that this is not a suit under any of the Acts passed by Congress in reference to the settlement of claims in East Florida but entirely independent of them. According to the theory of appellees those acts have no application whatever."

In other words, in the Furman case it was admitted by the complainants in the bill, who were claimants under the Grant, that the Grant had never been confirmed but they stood entirely upon the Spanish Grant. In the case at bar the claimants always insisted that the Grant was confirmed by the Act of May 23, 1828, the lands in the Grant being less than a league square, and on that contention they obtained their patent from the United States.

In the Furman case, the alleged Grant was based upon either the settler's rights of the claimant, Jesse Fish, who obtained the alleged Grant, or the settler's rights of his father and the purchase by Fish of his father's estate at public sale. In the case at bar, the Grant was made in consideration of Military Services, and was unconditional, and did not require any occupancy to perfect same. In the Furman case, the alleged Grant was not executed by the Governor but was executed by one, Morales. The court in its opinion held that Morales had no power to execute said Grant. In the case at bar the Grant is made and signed by the Governor, Estrado, whose authority is fully sustained and recognized by the Supreme Court of the United States in the case of U. S vs. Percheman, 7 Peters, 57. The court holds in the Furman case that the Grant in the case of U. S. vs. Percheman, 7 Peters, was a complete and perfect title, although it is a title in consideration of military services signed by Estrado and for two thousand acres and not based upon settler's rights or occupancy or the number of members of the family of the grantee or the number of slaves held

by the grantee. In the Furman case it was further held that the Grant being for ten thousand acres, and clearly and distinctly more than a league square, that under the terms of the Act of May 23, 1828, a release should have been made by the claimant to the United States, or action taken by the claimant in the Superior Court for the territory of Florida under the said Acts of Congress of May 23, 1828, May 26, 1830, or under the Acts of June 22, 1860 and June 10, 1872, hereinbefore referred to, and that having failed to apply to the court under either of these Acts for the confirmation of the Grant, and having failed to execute a deed for the excess above a league square that the claimants of Furman and others were barred.

In the said Furman case it also further appeared that the claimants submitted their claims to the Land Department and on August 2nd, 1890, the Commissioners rendered their decision that the lands were public lands and subject to public sales, and on appeal, the Secretary of the Interior on June 22nd, 1893 affirmed this decision, and that no further proceedings were had in the Land Department to review said decision. In the case at bar the Secretary of the Interior sustained this Grant as confirmed under the Act of May 23, 1828, and as being less than a league square, and patent was issued in pursuance of said confirmation of said Act of Congress, so that the case of Mitchell vs. Furman and the case at bar are entirely different and the grounds upon which the Supreme Court in said Mitchell vs. Furman case held the Grant invalid have no application to the suit at bar.

JURISDICTION OF A COURT OF EQUITY IN THIS CAUSE.

The bill alleges that at the time of the filing of the bill the lands were wild and unoccupied. The answer denies this allegation and alleges that defendant was then in occupation of said land. The evidence shows that the defendant from 1900, when it purchased these lands, up to

this date has had an agent in charge and in possession of said lands. Their first agent, one Wofford, who was on the land before defendant purchased, and then L. J. Owens, and after him one Boykin, who was their agent at the time this bill was filed, and posted the said lands and kept persons off of said lands and had charge of same and resided from time to time in the cabin on said land. The lands are shown to be partly swamp, covered with cypress timber, and partly high lands covered with pine timber, and are valuable largely for the timber thereon. In fact, the swamp part of the land is only valuable for the cypress timber thereon. The defendant is the owner of a mill and the only practical possession and control it could make of such lands until it cut the timber thereon was to put some one in charge of the land and keep an agent looking after the land, and this it has done.

Fussell vs. Gregg, 113 U. S. 550.
U. S. vs. Wilson, 118 U. S., 86.
Frost vs. Spitley, 121 U. S., 552.
Whitehead vs. Shattuck, 138 U. S., 146.
Lacassagne vs. Chapino, 144 U. S., 369.

The burden of proof is on the complainants to show that the lands were in fact wild and unoccupied, and this the complainants have failed to do, because it is established in the evidence that the defendant's officers went on the lands when it bought them and put its agent, L. J. Owens, in actual possession of the lands and kept and maintained an agent in charge of said lands, preventing trespasses thereon and preventing taking of the timber from the land. (See pages 336 to 343.) This is the only possession such lands were practically capable of, particularly in an area of fifty-five hundred acres as is contained in this Grant.

In cases of this character, to-wit, a bill filed in equity to cancel deeds, the proofs must show that complainants are in possession or that lands are unoccupied. We submit that the evidence of L. J. Owens, pages of record 336

to 343, of the witness Boykin pages 367 to 370 of record, and of the Secretary of the Company, Wilson, pages 434, 435, 443 of record, show that the company at the time of the filing of this bill had said witness Boykin on the lands as their agent. Defendant company constructed a cabin on said lands for said agent, where he spent a part of his time and he exercised possession of entire Grant. Complainants have sought to show by testimony that this cabin was south of the south line of the Grant. We will discuss this testimony in detail hereafter, but we submit the burden of proof being on them to show that the lands were unoccupied and that the said cabin was not on the land, that they have not established by the preponderance of the testimony that the cabin was not on the land but the testimony of defendant's witnesses show that the natural objects described in the Field Notes and the lines established by the old Government plats and marks establish that the cabin is on the said Grant.

The dispute as to the south line of this Grant and the location and surveys of this line all were questions properly to be determined at law in an action of ejectment. We submit further that possession of a large tract in Florida may be through an agent not actually living on the land.

Sloan vs. Sloan, 25 Fla., p. 53.
Frost vs. Spitley, 121 U. S., 552.
Whitehead vs. Shattuck et al., 138 U. S., 146.

IN SUITS IN EQUITY TO CANCEL DEEDS OR OTHER INSTRUMENTS, THE LEGAL TITLE OF COMPLAINANTS MUST BE CLEAR, CERTAIN, DEFINITE AND SETTLED, OR A COURT OF EQUITY HAS NO JURISDICTION IN SUCH CASES.

In this case the title of complainants is uncertain and is not clear and not definitely settled or determined.

The complainants claim title to the lands in contro-

versy as the heirs at law of Teresa Rodriguez, to whom the Grant was confirmed. As will be seen hereafter the evidence as to the pedigree of complainants and their status as heirs at law of Teresa Rodriguez is incompetent as matter of law and is uncertain and unsatisfactory as matter of fact. No member of the family of Teresa Rodriguez and no one of her descendants testified upon this subject.

The proof is attempted to be made by alleged copies of entries claimed to be found in church records in Cuba. The proof of these entries has not been made in any legal or competent form, as hereinafter set forth. The positive matter stated in the entries does not establish the relationship or pedigree of each of the complainants. But as to certain of the complainants there is no positive proof, even if the certificates are admitted, as will hereinafter appear under discussion of such pedigree. Most of the alleged proof as to complainants' pedigree is found by way of recital of relationship in these certificates and not the substantive matter of the certificates showing marriage, birth and death. No one of the complainants has testified in this case in any manner, and no person who knew the family personally has testified in the case and no member of the family has testified as to relationship of these parties. There is no evidence that complainants, even if shown to be related to Teresa Rodriguez, are her only heirs at law. As to one of the persons named in the certificates, to-wit, Christina del Pozo Marcos de Nunez, it is stated in the certificate that she left a will, but no proof of that will or her disposition of her rights, if any, in this property by that will have been introduced in the case. Upon this ground, the complainants' title is not certain or definite, and such proof should be made in a court of law in an action to try the title.

The complainants claim in the bill and undertake to prove that one Martin, an attorney representing certain persons, who obtained the patent to this property, but not shown to be these complainants or their ancestors, entered upon and took possession of this land in 1896, and placed

one Owen in charge of the property, and thereby undertook to show the possession of the land. The defendant denies that Owen ever was in possession, and asserts that at the time he claims to have taken possession defendant's agent Wofford was in charge of the land and living on the land as the agent of defendant, and parties were then taking timber and palmetto from the lands by permission of the Florida Land and Colonization Company, under whom defendant claims title, and that this continued for some years after the time complainants claim that the said Martin took possession of said land. The question, therefore, of any prior possession of complainants or those under whom they claim is disputed and should be settled in an action at law, and a court of equity in this action has no jurisdiction to try said question.

The defendant claims to have had a house built on this land after it took possession, and that its agent Boykin has resided for parts of the time in this house on this land as its agent. The complainants insist that this house is not upon the land, because they contend that the south line of the Grant is a short distance north of the location of this house. The defendant insists that the south line of the Grant is south of the house and that the house is within the Grant. Proof of the surveys of this land by a number of surveyors has been introduced. This boundary line of the Grant is, therefore, put in dispute and is one of the issues of fact in the case. The questions are involved in the various surveys of this land and the location of the line of the Grant, and evidences on the trees and natural objects are in dispute. We submit that these are questions of title and possession that a court of equity will not undertake to determine.

The defendant insists that it and those under whom it claims, acquired the title to this Grant by adverse possession under color of title, as provided by the laws of Florida. Under statutes of Florida, adverse possession for the statutory period invests the title in the party holding such possession.

If the defendant has established such adverse posses-

sion at any time for the statutory period in it or those under whom it claims, the complainants have no title to the lands and could not maintain bill to cancel the conveyances referred to in the bill of complaint. The period of adverse possession claimed by defendant is from 1872, when G. C. Powell took possession, to the date of the filing of the bill. The possession of G. C. Powell from 1872 until 1882 is established in the testimony, page 262 to 275, and under the statutes of limitations of Florida the said party acquired title by such adverse possession and transferred all his title by his deed to Henry S. Sanford, (pages 482, 483, 955, 328). The possession of Henry S. Sanford is shown in the testimony. The actual period of occupancy by the Florida Land and Colonization Company, through persons actually living on the land from 1887 to 1900, when it transferred the title to the defendant, is established in the evidence, (pages 248 to 252, 955, 329,) and was a period greater than the statutory period of seven years of adverse possession required to give title under such possession to those claiming under color of title. The defendant after it purchased the land first had the witness Wofford on the land for a year or more as its agent living on the land, and then had the witness Owens and the witness Boykin in possession of the land as its agent. (See testimony of Owen, Boykin and Wilson, above mentioned.) The character and extent of possession of these various parties under whom defendant claims and of defendant are questions involving the title to the land and are in dispute. If such periods of adverse possession have been established the complainants have no legal title to the lands and could not maintain the bill in this cause and these are questions properly triable in an action of law.

The only questions that are properly to be tried and determined on a bill filed to cancel deeds and other instruments as being voidable and clouds upon the title are the existence and character of such instruments and the grounds upon which complainants contend that such instruments are voidable and should be cancelled. We

submit that the other questions as to title, possession and right of possession are properly triable only in a court of law.

This is particularly true in the Federal courts, whereby the Act of Congress the right of trial by jury is preserved by such Act and jurisdiction at law is made exclusive in cases involving legal right.

Frost vs. Spitley, 121 U. S., 552.
Orton vs. Smith, 18 How., 263.
Ward vs. Chamberlain, 2 Black 430.
Whitehead vs. Shattuck et al., 138 U. S., 146.

THE COMPLAINANTS HAVE NOT ESTABLISHED BY THE EVIDENCE THAT THEY ARE THE HEIRS AT LAW OF TERESA RODRIGUEZ, AND, THEREFORE, ENTITLED TO MAINTAIN THIS SUIT.

The complainants claim title as the heirs at law of Teresa Rodriguez. The answer demands strict proof that complainants are such heirs, and the burden is, therefore, on complainants to prove same. The evidence offered in this respect is that of complainants' witness Sariol (119 to 155) and the witness Sanchez (448 to 526), together with what purport to be certificates of marriages, births and deaths, pages 984 to 1024.

In cases of this character, to-wit, bills filed in equity to cancel conveyances, the decisions are uniform that the complainant's title must be a legal title and must be clear, undisputed and not doubtful but certain and established. If complainants' legal title is not certain or not distinctly and positively established, such legal title must be established and proven in an action of ejectment at law brought by complainants against defendants, and if it appears that the question of complainants' title or claim of title to the property in question is left in doubt, a court of equity will not in this character of suit try the title. The real purpose of this character of suit is to cancel con-

veyances and the only questions the court should be required to investigate are those in reference to the character of such conveyances.

See authorities already above cited on this subject.

Also

Phelps vs. Harris, 101 U. S., 70.
Dick vs. Foraker, 155 U. S., 454.
Orton vs. Smith, 18 How., 263.

All of the heirs of Teresa Rodriguez should be parties complainant in order to settle the entire litigation.

Vol. 15 Enc. of P. & P., 611-624.
32 Enc. of Law, 1346, 1347.
Theurer et al. vs. Brogan et al., 41 Ark., 93.
Bunce vs. Gallagher, Fed. Cases, Vol. 4, number 2133.

PROOF INSUFFICIENT OF COMPLAINANTS' PEDIGREE AS HEIRS OF TERESA RODRIGUEZ.

We submit that the proof of the pedigree of complainants is entirely insufficient. The proof offered is as follows:

(a) Testimony of Sariol (pages 119 to 155). This testimony is insufficient, and is in effect that he in 1885 looked up certain persons in Havana whom he understood to be the heirs at that time, and he examined church records as to the deaths, births and marriages referring to certain parties then claiming to be heirs. All of this evidence is hearsay. He was not a member of the family, and, therefore, cannot testify from tradition. His statement as to examinations of records at that time is incompetent. Only duly authenticated copies of the records themselves could be admitted as proof.

(b) Testimony of Sariol (148 to 150 inclusive) as to investigation made with J. H. Jones in 1906 or 1907 in-

competent. He did not know personally any of the parties who conversed with him as the then heirs and made no examinations of the records at that time.

(c) Testimony of the records from the church in St. Augustine (196 to 218 and 1004 to 1023 inclusive) only established the marriage of Marcos and Teresa Rodriguez and the births of their children.

(d) Testimony of Sanchez (488 to 526) as to alleged copies of records as to marriages, deaths and births to establish pedigree of present claimants incompetent.

(e) No competent testimony was introduced establishing that the parties signing these several certificates were the custodians of same or that the parties with whom Sanchez claims to have compared them were in fact the custodians, and no competent evidence that the book or books from which such records were taken were in fact the original records of births, deaths and marriages in the places referred to therein. The depositions of the custodians were not taken to establish these facts. The instruments were not admissible as certified copies of these records because the seals are not of the character nor the records of the character, certified copies of which under the laws of Florida could be introduced in evidence on the faith of the seal.

(f) Custodians of the records in question were neither sworn nor subjected to cross examination nor the books or records produced for inspection by defendant.

(g) The alleged certificates contain recitals as to pedigree of the party in reference to whom the certificate was made either of birth or death. These recitals of such pedigree or ancestry of this party contained in the certificate would not be competent evidence even if the evidence were otherwise proper to be received. The only competent evidence of the facts stated in such recitals would be the deposition of the custodian of the records of the marriages, births and deaths—the subject matter of such recitals.

The complainants in this case, by their solicitors, practically admit in the record that the alleged proof

offered by them only, according to their contention, established pedigrees as to eight of the complainants named in the bill. See pages 72 and 73 of the record. The court in its decree finds and decrees that these eight complainants are entitled to an undivided interest in and to the lands described and for themselves and as representatives of all persons claiming title to said lands through the said Teresa Rodriguez are entitled to maintain this bill. The court further finds and decrees that the deeds mentioned in the decree are clouds upon the title of Teresa Rodriguez, the original grantee under the Spanish Grant, her legal representatives and heirs at law. We submit that the proof offered does not establish the pedigree of either or any of the complainants by any legal evidence and complainants whose pedigrees have not been established are not entitled to a decree under the doctrine of representation.

A careful examination of these certificates will show that they only positively contain in the certificate itself, if the copy were admissible, the following facts:

RECORDS FROM ST. AUGUSTINE.

1. Marriage certificate of Miguel Marcos and Theresa Rodriguez, January 4, 1796.
2. Baptismal certificate of Miguel Joseph Marcos, November 6, 1800.
3. Baptismal certificate Dorothea Marcos, February 9, 1802.
4. Baptismal certificate Mario Gracio Marcos, January 31st, 1805.

EXHIBITS FILED WITH EVIDENCE OF EUGENE M. SANCHEZ, MAY 5, 1910.

1. Death certificate, June 20, 1850, of Maria Rodriguez.
2. Marriage certificate, December 28, 1830, Miguel Marcos and Josefa Maria Diaz.

3. Burial certificate, March 4, 1867, Miguel Marcos.

4. Entry dated March 24, 1871, Felix Genaro born in 1840.

5. Marriage certificate Nicholas del Pozo and Dorothea Paula Marcos, September 20, 1820.

6. Baptismal certificate, August 10, 1832, Christina Pozo.

7. Marriage certificate Allejandro Jose Marcos Nunez Villa de Cencio and Christina del Pozo.

8. Burial certificate, March 6, 1879, Dorothea Marcos Rodriguez.

9. Death certificate, March 31, 1889, Christina del Pozo Marcos de Nunez, died March 30, 1889.

10. Baptismal certificate Ernesto Eleutario, son of Allejandro Nunez Villa de Cencio and Christina del Pozo.

11. Marriage certificate, November 17, 1825, Augustin Garcia and Maria Gracia Marcos.

12. Baptismal certificate Genaro Maria Garcia.

13. Marriage certificate Genaro Maria Garcia and Adela Pechard.

14. Death certificate, November 20, 1886, Genaro Garcia Marcos.

15. Baptismal certificate Augustin Ricardo.

16. Marriage certificate, November 21, 1867, Augustin Ricardo Garcia and Maria de la Concepcion Ochanderena.

17. Baptismal certificate Ricardo Cecelio Marcos, son of Augustin Garcia Marcos.

18. Death certificate, dated April 26, 1836, Augustin Garcia.

Certificate with affidavit of Eugene M. Sanchez, to-wit, certificate of baptism of Lorenzo, son of Genaro Garcia and Adela Pechardo.

We insist, however, that these alleged certificates are not admissible in evidence and are not proven at all for any purpose for the reasons above set forth. There has been no such identification of the records or the character of the records or of the person purporting to have custody of the records making these papers as to justify

their consideration for any purpose. The rules of evidence require that where a record of this kind, which is not proven to be an official record required by the law to be kept in Cuba of the matters referred to, but is introduced as a Church record kept by way of Church custom, and where it is a very old record, the testimony of a credited custodian should be taken by deposition, showing the age and character of the record and the place where it is usually kept and his receiving the same as a record and being the custodian thereof. The testimony of Sanchez in this case does not establish that he personally was the custodian of any of the records he examined or was competent to testify as to the character of such records or the custody of them. There is no rule of law that will admit these copies on the testimony of Sanchez as to his comparing them with what he understood to be the originals. Proof should have been taken in this case of the Custodian of the records to these copies.

These entries and Church registers are admissible, not to prove any collateral fact or statement therein, but to prove merely and solely the fact that the person making the entry knew at that time that the baptism or marriage or funeral as the case may be, had been performed as therein stated. The method adopted by complainants in attempting to make this proof through Sanchez and his examination of the alleged record is not sustained by any of the authorities.

See

Blackburn vs. Crawford, 70 U. S., 175; 18 L. Ed., 186.
3d Wall., 175.
Whitchen vs. McLaughlin, 115 Mass., 167.
Sitler vs. Gehr, 105 Pa. State, 577.
State vs. Tooris, 40 Conn., 145.
Hutchins vs. Gerrist, 52 N. M., 205.
13 Am. Reps., 19.
1 Greenleaf on Evidence, Sec. 508.
Thompson vs. Mason, 4 Ill., App., 452.
1 Greenleaf's Evidence, 493.

As to proper evidence of proving entries in an alleged record of this character or by whom the entries shall be proven:

1st Greenleaf on Evidence, Sec. 120, 16 Ed.
Vol. 10 Enc. of Evidence, 738, 739 and notes.
Durfee vs. Abbott, 61 Mich., 471 (28 N. W., 521.)
Haulton vs. Manteuffel, 51 Minn., (1892), (53 N. W. 541).
Morrison vs. Ferry Co., 47 Mo., 521.
Berry vs. Hull, 6 N. M., 643; (30 Pac. 936).

In addition to the above mentioned facts purporting to be stated positively in the certificates, there are recited the relationship of the parties as follows:

RECITALS IN CERTIFICATES.

1. Miguel Marcos, son of Miguel and Rosa Fuentes. Teresa Rodriguez, daughter of Lorenzo Rodriguez and Isabel Casibada Piuna, and that Teresa Rodriguez was the widow of Julian de Salas.

2. Miguel Joseph Marcos, son of Michael Marcos, son of Joseph and Rosa Fuentes, also son of Teresa Rodriguez, daughter of Lorenzo and Isabel Piuna.

3. Dorothea Marcos, daughter of Michael Marcos, son of Joseph and Rosa Fuentes; also daughter of Theresa Rodriguez who was daughter of Lorenzo and Isabel Piuna.

4. Maria Gracia Marcos, daughter of Michael Marcos, son of Joseph Fuentes and said Maria, daughter of Teresa Rodriguez who was daughter of Lorenzo and Isabel Piuna.

Exhibits of May 5, 1910, with Testimony of Sanchez.

1. Maria Rodriguez, daughter of Lorenzo and Isabel Piuna. Wife second marriage Don Julian Salas.

2. Miguel Marcos, son of Miguel Marcos and Theresa Rodriguez. Josefa Maria Diaz was daughter of Bartolemo Diaz and Blasa Maria Fernandez.

3. Miguel Marcos was son of Miguel Marcos and Theresa Rodriguez and widower of Joseph Diaz.

4. Felix Genaro was son of Miguel Marcos and Josefa Maria Diaz. His paternal grandparents, Don Miguel and Theresa Rodriguez; Maternal, Bartholema and Blasa Maria Fernandez.

5. Nicholas del Pozo was son of Ygnatio Pozo and Rosa de Lima, and she was the daughter of Miguel Marcos and Theresa Rodriguez.

6. Christina Pozo was daughter of Nicholas del Pozo and Dorothea Marcos. Paternal grandparents, Ygnatio Pozo and Rosa de Lima; maternal grandparents, Miguel Marcos and Theresa Rodriguez.

7. Allejandro Jose Marcos Nunez Villa de Cencio, son of Allejandro and Dona Dellen Alvarez. She the daughter of Nicholas and Dorothea Marcos.

8. Dorothea Marcos Rodriguez, daughter of Miguel and Theresa and widow of Nicholas del Pozo Lima. Left eleven children, Rosa, Theresa, Christina, Pillar, Jose, Quintin, Bascillio, Nicholas, Simeion, Lladislao Nicholas, Seraffin, Enrique del Pozo.

Dead, but party to bill.

9. Christina del Pozo Marcos de Nunez, daughter of Nicholas del Pozo Lima and Dorothea Marcos Rodriguez. Married to Allejandro Nunez de Villa Cencio Alvarez, left four children, Allejandro Arturi, Alfredo, Ernesto and Amelia.

10. Ernesto Eleutario, son of Allejandro Nunez Villa de Cencio and Christina del Pozo. Paternal grandparents, Allejandro and Dona Dellin Alvarez. Maternal grandparents, Nicholas and Dorothea Marcos.

11. Don Augustin Garcia was the son of Pedro Garcia and Micella Diaz. Maria Garcia Marcos was the daughter of Miguel Marcos and Theresa Rodriguez.

12. Genaro Maria Garcia was the son of Augustin Garcia and Maria de Gracia Marcos. Paternal grandparents, Pedro Garcia and Micella Diaz. Maternal, Miguel Marcos and Theresa Rodriguez.

13. Genaro Maria Garcia, son of Augustin Garcia

and Maria Gracia Marcos. Adela Pechard daughter of Estaban Pechard and Dolores Valides.

14. Genaro Garcia Marcos, widower of Dona Adelaida Pechard and son of Augustin and Alta Gracia.

15. Augustin Ricardo, son of Augustin Garcia and Maria Marcos. Paternal grandparents, Pedro and Micella Diaz. Maternal, Miguel and Theresa Rodriguez.

16. Augustin Ricardo Garcia was the son of Augustin and Maria Garcia Marcos. Married Maria de la Concepcion Ochanderena. He was the widower of Isabel Prieto. His second marriage to Matilde Waldez.

17. Ricardo Cecelio Marcos, son of Augustin Garcia Marcos and Concepcion Ochanderena. Paternal grandparents, Augustin and Dona Alta Gracia. Maternal, Fernando and Josefa Sanchez.

18. Augustin Garcia, son of Pedro Garcia and Micella Diaz. Married to Maria Marcos. Left as his children, Genaro, Pedro, Miguel, Augustin, Florentina, Maria Gertrudius.

Certificate with affidavit of Eugene M. Sanchez, Lorenzo, son of Genaro and Adela Pechard. Paternal, Augustin and Alta Gracia Marcos. Maternal, Estaban and Dolores Armentoros.

Even if the certificates are accepted as competent proof of all the above facts and recitals, they do not prove the pedigree of the complainants.

These recitals are not relevant to the fact of marriages, births nor deaths purporting to be known to the party who made the entry but are recitals of other facts of parentage derived from other records not identified, and that such recitals are clearly hearsay. These recited facts are not proven by tradition by persons in the family who knew them or by copies of any original records showing such facts but are attempted to be proven from the recitals in the above mentioned certificate of births, marriages and deaths. This is still a more remote attempt to make proof than the positive matter of the births, deaths and marriages positively contained in the record. We

submit such recitals are not permitted as proof by any rule of law.

The attention of the court is especially called to the fact that no one of the complainants who purport to be descendants of Teresa Rodriguez testified as witnesses in this case to the pedigree or relationship of any of the complainants. This proof is usually made by members of the family from their recollections of their ancestors and relations and from statements received by them from their ancestors as to their pedigree and relationship from more remote ancestors. It is remarkable in this case that no one of the complainants or any other person purporting to be a relation or descendant of Theresa Rodriguez testified in the case to anything either as to relationship or claim of title to the property in question or claim of possession or right of possession. These complainants apparently have never made any claim to this property, and so far as the records show know nothing about it, but it appears from the testimony of the witness Sariol that about a year before his testimony was taken, that is, in March, 1907, he went with one of complainants' counsel, Mr. J. H. Jones, to Cuba to look up these heirs. He never knew any of the present complainants personally. See pages 148 to 152, inclusive, testimony of witness Sariol, and had never met them before. In 1885 the witness Sariol first brought to the attention of persons claiming to be the descendants of Teresa Rodriguez their supposed claim of title to this property. (See page 146 of record). He then claimed to have received powers of attorney from those persons. The persons he met in 1907 when in Cuba with Mr. Jones were an entirely different set of people from the persons he knew personally in 1885, who were all dead. (See page 148 of testimony of Sariol.) He and Mr. Jones only went to Havana and a place near Havana known as Jaruco. They did not examine any of the parish records. (See page 151 of testimony.) He claims to have been connected at one time with Mr. Butt of Orlando in prosecuting this claim. (See page 152 of record.) Witness Sariol

states that he was employed in March, 1907, to help Mr. J. H. Jones, one of complainants' solicitors, in gathering up powers and contracts; that he was to introduce Mr. Jones to parties that he knew as surviving heirs. It is thus apparent that Mr. Sariol with Mr. Jones looked up the complainants in order to obtain such powers of attorney and contracts concerning the alleged claims to this land of the complainants to this suit. (See page 141 of the record.) It appears that the witness has lived in Washington since 1892. (See page 143 of record.) That he was engaged in the brokerage business before he took up prosecuting this class of claims; that he began the investigation or inquiry in reference to the heirs of Teresa Rodriguez in 1885, about a year before he got powers of attorney. (See pages 144 and 145 of record.) He admits that he looked up the heirs himself, (see page 146 of the record) and that he had never known them prior to 1885. It will thus be seen that neither the complainants in this case or the complainants in the former suit or any other persons claiming to be heirs of Teresa Rodriguez ever themselves made claim to this land or took any steps of their own accord to make claim to it, but the witness Sariol in 1885 or 1886 commenced the agitation of this claim and attempted to institute proceedings to claim the title to this land, and in 1907 the complainants' said witness Sariol with one of their solicitors, Mr. J. H. Jones, went to Cuba to look up the present complainants to obtain from them powers and contracts. He only personally had more than casual acquaintance with two of those who claimed to be the first claimants in 1885. (See pages 147, 148 of the record.) None of these persons are now living. (See page 150 of record.) The testimony of Sariol as to pedigree is wholly unreliable and does not establish the pedigree of the present complainants at all, and none of the present complainants testified as to their relationship or claim of relationship to the original claimant Marcos or to Teresa Rodriguez, to whom the Grant was confirmed. He does not claim to have made

any examination of parish records at that time, and those records he claims are still in existence.

The court in this case is called upon now to recognize and establish the claims of complainants and descendants of Teresa Rodriguez, to whom this Grant was confirmed in 1828. It appears from the certificate introduced by complainants that Teresa Rodriguez died in 1850, and that all of her children have been dead for many years. Neither she nor they ever asserted claim of title to the property in question. She had been dead thirty-five years before the witness Sariol stirred up and started this claim on the part of persons living in Cuba to this property. The present claimants seem to have had no knowledge of it and taken no action on it until 1907, fifty-seven years after the death of Teresa Rodriguez, and seventy-nine years after the confirmation of the Grant to Teresa Rodriguez and her children. We submit that it would be very dangerous for a court to undertake at this day and with the character of proof offered here as to the relationship of complainants to M. Marcos, the original Spanish grantee, and Teresa Rodriguez to render a decree in favor of these complainants on the theory that they had definitely and distinctly and certainly proven in this court by competent evidence that they are the heirs and the only heirs at law of M. Marcos and Teresa Rodriguez.

We also submit that even if a court should find after careful scrutiny of the alleged certificates produced that the testimony of the witness Sanchez that certain of the complainants are descendants of M. Marcos and Teresa Rodriguez, there is no proof that they are the only descendants. The certificates do not establish the pedigree of all of these complainants even, and do not establish that they are the only heirs. This effort to establish pedigree at this late date is one of the strongest reasons why the court should dismiss this bill on the grounds of complainants' laches and delay and the laches and delay of their ancestors in asserting claim of title to this land. If the court is in doubt as to their pedigree, it is the duty

of the court under the decisions to dismiss the bill and to compel the complainants to test their claims, if any they have, by an action at law.

COURT'S OPINION AS TO PROOF OF PEDIGREE AND AS TO THE DOCTRINE OF REPRESENTATION.

The district court in its opinion, pages 93, 95 and 96 of the record, holds that the records of births, deaths and marriages kept in accordance with law or by religious associations in accordance with custom is sufficient proof of pedigree, and that copies of such records have been introduced in this case. The court further holds, on page 94, that the allegation of secondary facts stated in such records, where the pedigree is denied, is sufficient, and that a prima facie case is sufficiently shown by the evidence in this case. We submit under the decisions hereinabove quoted that the certificates in this case were not proven or the records from which the same were taken proven by the custodian, nor is their authenticity proven by anyone having sufficient knowledge thereof; that there is no law of Florida authorizing the use of such records. We further submit that the recitals in these records are not evidence for any purpose either to make a prima facie showing of pedigree or for any other purpose, and that the court erred in its opinion and holding that such prima facie showing is made by this evidence. In this suit the answer distinctly demands strict proof of this part of the complainants' case, and being a bill to cancel deeds the complainants' title under such decree must be clearly and distinctly established by the evidence. The court in its opinion, found on pages 95 and 97, in effect admits that the pedigree of only a few of the complainants has been shown even by this incompetent testimony, but holds that the bill may be maintained by them for their benefit and for the benefit of all other heirs, and that it is not necessary in this suit to make all of the heirs parties or to prove the pedigree of all of the heirs, but

that under the doctrine of representation, those whose pedigree is proven are permitted to represent all parties in interest, and that the rights of those not made parties are equally bound by the decree as those who are parties. We submit to the court that this doctrine does not apply to the bill filed for cancellation of deeds by parties complainant claiming title as the heirs of one who is deceased. This character of bill is not one of the bills mentioned in the authorities quoted as coming within this doctrine.

The defendant is entitled in this case to have the question definitely settled as to this title with all who are really the heirs of Theresa Rodriguez, and that they shall be parties to the suit so that all of these questions may be settled in this suit. We submit further that the rights of heirs not made parties to a suit of this character are not bound by the decree, and that this case is in no wise analogous to a creditors or stockholders bill. The reason why creditors of the same class are bound by a decree on a creditors or stockholders bill is that the decree settling the equities provides for a general notice being given for proving the claims by creditors or stockholders in a Master's office. An opportunity is given to prove their claims by all creditors in the Master's office, but in a case like the one at bar, where a bill is filed to cancel deeds, there is no practice by which a cause can be referred to a Master who shall give extended public notice to all persons interested to make proof before him of their claims or be barred by the decree. Therefore, only those persons who are actually parties complainants and actually prove their pedigree in a suit where the answer demands such proof, are bound by the decree in the suit. In case of joint tenants or tenants in common, they must all be parties complainant to a bill in equity in reference to land. This is decided distinctly in reference to a bill filed to cancel deed to land. See following authorities:

In Freeman on Tenancy and Partition, paragraphs 368, 369, the language is as follows:

"If any one of the heirs seek to set aside a deed from ancestor on account of fraud in its procurement, all the heirs must be brought before the court. The deed, if set aside, affects the whole property. The court, therefore, will not act until all persons interested are before it."

See Young vs. Bilderback, 2 Green's Chan., 206. Hardy vs. Handy, 11 Wheat., 103; L. Ed. 6, pages 103, 130.

In 2nd Green's Chancery, 206, 3 N. J. Equity, the court states the rule as follows:

"If a conveyance is set aside or cancelled, the decree will affect the whole property and not a part only. The whole title is before the court and all persons interested in it and on whose rights the decree may operate should be there also."

The district court cites Story's Equity Pleadings, page 107, as sustaining the decree. It will be found, however, that the author in Section 159 on page 166 (10th Ed.) states the further rule as follows:

"Hence it is that one joint tenant cannot ordinarily sue or be sued without joining the other joint tenants. So tenants in common must all sue and be sued in cases attacking their common rights and interest."

So in Section 160, page 168 and notes, the author repeats the rule that all heirs should be made parties or be before the court in all bills filed to set aside a conveyance made by their ancestor, and we think that is the rule that controls the case at bar.

As to suits or cases brought by one person having a common interest with others for the benefit of all who may come in under the bill, these suits are confined to cases where those not before the court have an oppor-

tunity to prove their claims in the same suit by becoming parties, or before a Master who has given notice.

See Story's Equity, Sec. 99 and Notes showing that the defendant is protected by all creditors being required to prove their claims before the Master or be made actual parties to the bill.

See also Beach's Modern Equity Prac., Vol. 2, Sec. 682.

Johnson vs. Waters, 111 U. S., 684, 700; L. Ed. 28, page 555.

None of the bills of this class referred to in Story's Equity Pleadings are bills by the heirs of an ancestor seeking to set aside conveyances purporting to be of the title of the entire property.

WANT OF PROPER PARTIES DEFENDANT.

The amended bill, page 77, shows that a portion of the land involved in this suit was conveyed by tax deed to one M. C. Crumpler in 1887, and another portion of said land to one J. C. Kryce, and another portion of said land to Buffom Land and Trust Company. (See record, page 77.) These parties are not made parties defendant to the bill. The title to the portion of said lands so conveyed to them according to the answer of the defendant, (pages 35 to 49 of the record), is in the said Crumpler, Kryce and said Buffom Land and Trust Company, and no decree of cancellation could be made in this case in favor of complainants as to those portions of the land unless these parties are made defendants. Copies of these tax deeds to Crumpler, Kryce and Buffom Land Company were also filed in evidence, pages 962 and 920 to 922.

Portions of these lands are also included in a tax deed from J. P. Hughey, Clerk, to Henry S. Sanford, dated the 25th of January, 1882 (see page 82 of record), and shown by complainants' amended bill (page 76 of record), and certain tax sale certificates were issued on portions of

said land to one, James E. Ingraham, and assigned by him to said Henry S. Sanford, and a certain tax certificate was issued to Thomas E. Wilson and assigned by him to said Henry S. Sanford. These are all sources of title in the said Henry S. Sanford having no connection with the tax deeds to John Starke made in 1852 or with the tax deed to William Mills in 1872. No proof has been offered to show that these tax sales were not valid. They vest title in Henry S. Sanford to the property, and while said title is outstanding the complainants could not maintain this bill as the owners of the legal title of the property, and the decree in this case could not undertake to cancel these deeds.

If, as we contend, the first tax deed from John Simpson, Sheriff, to John Starke is valid, even if the subsequent deeds were cancelled, this bill could not be maintained without making the said Simpson or his heirs party defendants. It will be noted that the decree in this case does not undertake to cancel the deed from William Mills to George C. Powell, dated the 3d of May, 1872, Exhibit 5, found on page 871 of the record, nor the deeds from George W. Powell and wife to Henry S. Sanford, defendant's Exhibits 6 and 7, pages 874-878 of the record. These deeds are warranty deeds. The decree does not mention the deed from Henry S. Sanford to Trustees of Florida Land and Colonization Company, found on pages 896-898 of the record, which is also a warranty deed. None of the grantors in said deeds are made parties to this suit. The court below had no power to cancel the deeds from John Simpson to John Starke and the deed from Robert C. Partin to William Mills, and the records show that the said Mills had conveyed his claim of title to said George C. Powell, and the said Powell had conveyed his title to Henry S. Sanford, who had conveyed his title to the said Trustees of the Florida Land and Colonization Company.

TITLES HELD BY APPELLANT OTHER THAN UNDER THE DEEDS DECREED TO BE CANCELLED IN THIS CAUSE.

Nearly all of the lands involved in this suit are included in a certain deed from J. P. Hughey, Clerk, to Henry S. Sanford, dated the 25th of January, 1882, see page 882 of record and referred to in complainants' amended bill, page 76 of record. Said Sanford held also under certain tax sale certificates issued on portions of the land, representing purchases at the sales, and which certificates were assigned by the State of Florida to one J. E. Ingraham and to Thomas E. Wilson, and assigned by them to said Sanford. These sales to the State, represented by said certificates, which vested title in the State as well as the said deed from Hughey, Clerk, to Sanford, prevent the appellees from maintaining this bill as the owners of the legal title of this property, and the decree in this case was erroneously entered undertaking to cancel the said deed from John Simpson, Sheriff, to John Starke, and the said deed from Robert C. Partin to William Mills, or any other deeds, at the instance of appellees because the appellees did not have legal title to said property.

LACHES.

The complainants' right to maintain this suit is barred by their laches and delay in bringing it and by their abandonment of the property and their claim of title thereto. The dates of the conveyances sought to be cancelled by the bill in this case are set forth in the statement of the case in this brief. The dates of such conveyances show the long lapse of time since they were made and recorded, and such lapse of time itself was so great as to constitute such laches and delay as bar complainants' right to relief under this bill.

The deed from John Simpson as Sheriff and ex officio Tax Collector of Orange County, Florida, to John Starke

is dated the 5th day of July, 1852, nearly fifty-five years before the filing of this bill, and is recorded the 27th of June, 1855, nearly fifty-two years prior to the filing of this bill. The deed from R. C. Partin as Tax Collector of Orange County to William Mills is dated the 23d of April, 1872, more than thirty-five years before the filing of the bill in this cause, and is recorded the 14th of April, 1872, within a few months of thirty-five years prior to the filing of said bill herein. The said sale sought therein to be declared illegal was made on the 6th of March, 1871, as stated in said deed. The deed from William Mills to George C. Powell was dated the 23d of May, 1872, more than thirty-five years before the filing of said bill herein, and was recorded the fourteenth of October, 1872, within a few months of thirty-five years before the filing of the said bill herein. The deed from George C. Powell to Henry S. Sanford is dated the 27th of October, 1881, more than twenty-five years prior to the filing of said bill herein, and is recorded the second of February, 1884, nearly twenty three years before the filing of said bill herein. The deed from George W. Powell to Henry S. Sanford is dated the 15th of November, 1881, more than twenty-five years before the filing of the bill herein and recorded the second of February, 1884, more than twenty-three years before the filing of the bill herein. The deed from Henry S. Sanford to the Trustees of Florida Land and Colonization Company is dated the 9th of January, 1884, more than twenty-three years before the filing of the bill herein and recorded November 10, 1884, more than twenty-two years before the filing of the bill herein. The deed from Edwin S. Dawes and George A. Thompson as Trustees of the Florida Land and Colonization Company to the said company is dated the 2nd of December, 1899, and recorded in the public records of Lake County, Florida, within a few days thereafter. The deed from the Florida Land and Colonization Company to the defendant, Wilson Cypress Company is dated the 3d of May, 1900, and recorded the 10th of May, 1900. The bill of complaint in this cause was filed the first of May, 1907, but two days

less than seven years from the date of the executing of the deed to this defendant. The deed from J. P. Hughey as Clerk to Henry S. Sanford of this Grant is dated the 25th of January, 1882, more than twenty-five years before the filing of the bill herein, and is recorded on the same date, more than twenty-five years before the filing of the said bill herein. The original Grant from Spain to Miguel Marcos is dated the 18th of December, 1815, and the Board of Commissioners on December 16, 1825, rendered its decision recommending and reporting this Grant of fifty-five hundred acres for confirmation. This Grant was confirmed by Act of Congress, to-wit, Section 1 of the Act of May 23, 1828. (Vol. 4, Statutes at large, page 284.) The first evidence in the record of any action before the General Land Office at Washington by alleged claimants of this Grant is shown by letter of Butt & Silver, attorneys, dated the 29th of June, 1889, acknowledged by the Commissioner of the Land Office in his letter of October 29, 1889, being complainants' Exhibit 5. The Grant was surveyed in January, 1851, by M. A. Williams and approved June 20, 1851, by B. A. Putnam, Surveyor General, as shown by defendant's Exhibit "I." This survey and approval were more than thirty-eight years prior to any action taken in the General Land Office by parties claiming to be owners of the Grant and their attorneys applying for patent for same. This is the survey upon which the patent finally issued June 26th, 1895. The boundaries of the township were run in 1845 by C. C. Tracey, Deputy Surveyor, and the township was first surveyed by Government numbers in December, 1847, by R. W. Norris. This Williams survey of the Grant as approved by B. A. Putnam, Surveyor General June 20, 1851, is shown to have been a part of the United States Surveyor General's office at Tallahassee May 20, 1889, being the date of the certificate of W. D. Bloxham, Surveyor General, to said plat, and a copy of which certificate by W. D. Bloxham, Surveyor General, on May 20, 1889, was on file in the General Land Office at Washington as shown by defendant's Exhibit "1." The letter of W.

H. Milton, Surveyor General, to the Commissioner of the General Land Office, dated June 18, 1894, being complainants' Exhibit "8," refers to a record of this claim as approved by one LeRoy D. Ball, Surveyor General, on the 31st of March, 1880. On the 12th of February, 1894, the Secretary of the Interior made his order that a patent issue, which date is more than thirteen years prior to the filing of the bill herein. On the 26th of June, 1895, patent issued nearly twelve years before the filing of the bill herein. Neither the complainants nor their ancestors themselves ever took any action, as shown by this record, to acquire patent to or claim this property or to recover it at any time. The complainants' witness Sariol evidently first brought the matter to the attention of persons in Cuba who he thought were the heirs of Teresa Rodriguez, and he testifies he obtained powers of attorney from them in 1886 but he abandoned the prosecution of the matter in 1889. None of the persons that the witness Sariol recognized as such heirs in 1886 are complainants to this suit and he testifies such persons are all dead. Certain persons, not present complainants, filed a bill in this court on June 24, 1902, to cancel some of the deeds hereinabove mentioned. This suit was dismissed for want of prosecution on April 4, 1904. The bill alleges that the said suit was dismissed on account of the neglect of counsel of complainants in said bill. The sworn answer in this case alleges and the record in said suit shows that said suit was dismissed on account of the failure of the complainants in said suit to furnish evidence to their then counsel to be used before the Master in establishing complainants' claim, and the default in said matter, on account of which such dismissal occurred, was that of complainants and their ancestors. The principles on which the bar of laches rests are well recognized in courts of equity and have been often declared by the Federal Courts. It has been decided in a number of cases that "only conscience, good faith and reasonable diligence can call a court of equity into activity and that stale demands will not be

aided where the party has slept upon his right and acquiesced for a great length of time."

This doctrine is based upon the ground of public policy, and its aim is the discouragement for the peace and repose of society of stale and and antiquated demands. Some of the elements entered into in bar of laches are the questions of public policy above mentioned and the increase in value of the property, the difficulty of doing substantial justice between the parties at this date, the apparent abandonment of their claims by complainants, the permitting of defendant and those under whom it claims to expend money for taxes, surveys and the care of the property, the failure of complainants to pay any taxes upon the property or to use the property or to make any expenditures thereon, the loss of evidence where, from delay, conclusions of the court must as to important matters involved in the suit be conjectural and the original transactions have become obscure by lapse of time, loss of evidence and death of parties or witnesses—the complainants will by their laches be precluded from relief even if the claim originally was not unjust.

The following cases in the Supreme Court of the United States assert this doctrine of laches as bar to relief in equity:

Kiley vs. McGlynn, 20 Wall., 502.
Mackall vs. Casalier, 157 U. S., 556.
Johnson vs. Standard Mining Co., 148 U. S., 360.
Witsell vs. Minn. R. Transfer Co., 169 U. S., 237.
Willard vs. Wood, 164 U. S., 502.
Moran vs. Horsby, 178 U. S., 285.
Phoenix vs. Packard, 145 U. S., 317.
Gallagher vs. Coldwell, 145 U. S., 368.

Residence of complainants in a remote territory does not excuse laches, neither will failure to prosecute suits

brought by the same complainants or their ancestors but left undetermined.

See

Kiley vs. McGlynn, 20 Wall., 503.
Dow vs. Sampson, 23 Fla., 445, 449 and the authorities there cited.

Negligence or errors of attorneys representing complainants in proceedings in Washington or former suit brought in this court would not excuse laches.

18 Am. & Eng. Enc. of Law, 111.
Ives vs. Sargent, 119 U. S., 652.

Those claiming under Teresa Rodriguez could have filed their bill in equity at any time after confirmation of the Grant May 23, 1828, to cancel any tax titles or clouds on their title.

See

Sloan vs. Sloan, 25 Fla., 53.
Van Wyck vs. Kneaveles, 126 U. S., 101.
Lee vs. Johnson, 116 U. S., 48.
Sampson vs. Smiley, 13 Wall., 91.

Also

Lindsey vs. Howe, 2 Black., 554.
Hughes vs. U. S., 4 Wall., 232.
Rector vs. Gibson, 111 U. S., 276, 289, 290.
Garland vs. Winn, 20 How., 6.

Various periods of time have been held sufficient to bar by laches a complainants' claim in equity, for example, in Richards vs. Mackall, 124 U. S., 183, a period of twelve years delay was sufficient.

In Hannah vs. Moulton, 138 U. S., 486, a period of thirteen years.

In the fifth circuit, thirteen years lapse of time between the dates of tax deeds and the filing of the bill has been held sufficient to bar the right to maintain the bill.

Florida Coast Line Canal and Transportation Co. vs. Ellsworth Land Co., 144 Fed. Rep., 972.

PERIODS OF DELAY LESS THAN STATUTES OF LIMITATIONS MAY CONSTITUTE A DEFENSE OF LACHES AND LAPSE OF TIME IN EQUITY.

See

Metropolitan Bank vs. St. Louis Despatch Co., 149 U. S., 236.
Haywood vs. Eliott National Bank, 96 U. S., 611.
McKnight vs. Taylor, 1 How., 161.
Alsop vs. Ricker, 155 U. S., 440.
Richards vs. Mackall, 124 U. S., 183.

Laches began to run against the ancestors of complainants as soon as the tax deeds were executed, but even if this defense was only available from the date of patent, nearly twelve years existed between the date of the patent in 1895 and the bringing of this suit in May, 1907, and nearly seven years between the date of the deed to defendant, May 3, 1900, to the bringing of this suit, May 1, 1907.

THE LOSS OF EVIDENCE IS ONE OF THE GROUNDS FOR ENFORCING THE DOCTRINE OF LACHES.

It applies in this case in several particulars. Examples of its application are the survey of the Grant made by M. A. Williams in 1851. The record shows that Williams is now dead, and it cannot be shown upon what facts or previous survey he made his location and survey of this Grant or where he located south line of Grant. The south line of the Grant is in dispute, as shown by the evidence. The witness Beardall, who surveyed this Grant for the Florida Land and Colonization Company, from whom defendant purchased, is also dead, and his testimony cannot be taken as to the location of the Grant or the south line thereof. Complainants contend there is no record of the assessment of this Grant for taxes for

the years 1845 to 1852, for nonpayment of which it was sold. These records of Orange County, where the land was situated, were all destroyed. The records in the Comptroller's office, on account of age and use, are in such condition it is impossible to ascertain whether the land was assessed or not.

The increase in value of the property is one of the reasons for enforcing the doctrine of laches. This is shown in testimony of the witness Ingraham, pages 481-482 and the witness Wilson, page 440.

PROPERTY ABANDONED BY TERESA RODRIGUEZ AND THOSE CLAIMING UNDER HER.

The records show that neither the complainants nor those under whom they claim themselves ever took any action personally to recover these lands or to have deeds under which defendant claims cancelled. The bill alleges that in 1890 they employed counsel to obtain a patent to this land. The record shows that somebody's counsel corresponded with the Department in 1889. Those under whom complainants claim took no action and apparently had abandoned the property until the witness Sariol hunted up parties in Cuba whom he claimed to be the heirs in 1885 and commenced the agitation of this claim. He abandoned the prosecution of the claim in 1889, and the present complainants were only brought into this litigation in 1907. The witness Sariol and Mr. J. H. Jones, one of complainants' solicitors, went to Cuba to get powers of attorney and contracts from the present complainants claiming them to be the heirs. Sariol and Mr. Jones apparently had to look up these persons and they claim to have had them identified. Sariol had no acquaintance with any of the present claimants and does not know any of them now personally except as he met them in 1907. It thus appears that none of the persons claiming to be the heirs of Teresa Rodriguez would ever have made claim to this property if it had not been suggested to them by other persons.

From the date of confirmation of the Grant in 1828 to the action taken in the Land Department in Washington in 1889 or 1890, according to the allegations of the bill, the ancestors of complainants lived in Cuba and practically abandoned the land. Neither complainants nor their ancestors ever took any active steps to claim the land prior to 1889 or any steps to take possession except the action of the witness Martin in 1896. Complainants' witness J. P. Owens claims that he went over the land with Martin and looked after the lands for about a year and a half in 1896 or 1897. Owens never lived upon the land and at the time he claims to have been looking after it the Andersons were cutting cedar off the land under permission of the Florida Colonization Company and Thomas or Wofford as agents of the Florida Land and Colonization Company were living upon the land at this time

NEITHER COMPLAINANTS OR THEIR ANCESTORS EVER PAID ANY TAXES UPON THE PROPERTY TO SUPPORT THE GOVERNMENT.

The property was sold for taxes by Simpson as Sheriff and ex officio Tax Collector to Starke, to-wit, in 1852, for the taxes of 1845 to 1851, inclusive. The property was again sold in 1872 for the taxes of 1867, 1868 and 1869 by R. C. Partin as Tax Collector to William Mills, and the testimony of Rand shows that the taxes were paid by Florida Land and Colonization Company from 1882 to 1900, and after 1900 the taxes have been paid continuously by the defendant, Wilson Cypress Company. The failure of the complainants to ever pay any taxes on the property is an evidence of abandonment of their claims and one of the reasons why for public policy a court of equity will not lend its active aid in this suit.

PRESUMPTIONS AFTER LAPSE OF TIME.

AFTER THIS LAPSE OF TIME A COURT OF EQUITY WILL PRESUME THE PROPER EXECUTION AND ACKNOWLEDGMENT OF DEEDS AND WILL PRESUME THE PROPER ASSESSMENT AND OTHER TAX PROCEEDINGS UNDER WHICH THE SALES FOR TAXES WERE MADE, AND WILL PRESUME THAT THE SURVEY BY M. A. WILLIAMS IN 1852 WAS MADE FROM THE PREVIOUS SURVEY OR LOCATION OF THE GRANT BY THE CLAIMANT.

Another effect of the long lapse of time since the transactions occurred which are sought to be investigated in this cause is that a court of equity must presume that officers have properly performed their duties and that documents now found on the record were originally properly executed and acknowledged.

In re Bollman, 4 Cranch, 75.
Van Ness vs. Bank of U. S., 13 Peters, 17.
1st Enc. of Evidence, 872, 873, 875 and notes.

The court will presume that the original deed from Simpson as Sheriff and Tax Collector to Starke had witnesses on it after this lapse of time and that the Clerk omitted to record same.

The court will also presume that this deed from Simpson as Sheriff to Starke was duly acknowledged before the Clerk, the same being now found after fifty years upon the records of Deeds in Orange County, Florida. The certificate to the deed shows that it was duly recorded by the Clerk and the law authorized the Clerk to take the proof of the witnesses for record or the acknowledgment of the grantor, and the fact that the Clerk recorded it

and certifies that he recorded it is equivalent to certifying that it was duly acknowledged or proven for record before entered and the court will so presume.

The court in the absence of positive proof to the contrary will now presume that there was at one time a record of the assessment of this property for taxes for 1845 to 1851, inclusive, upon which the sale from Simpson as Sheriff and Tax Collector to Starke was predicated. If the law required such assessment in writing upon the assessment roll or supplemental assessment, at this late date the court will not find that such assessment was not made but will presume that it was made as practically recited in the deed.

This Grant was separated from the public domain by the terms of the Grant and the description in the Grant. The claimants were required to survey and to locate it, and to furnish such survey and location to the Surveyor General on which he would act in putting it upon the township plat. After the death of Williams and all parties connected with the transaction it will be presumed that the parties had such survey made prior to 1851 and that Williams acted on such previous survey or other information of the description of the Grant as sufficient to identify the property, and, therefore, that it was separated by public survey during the years 1845 to 1851 inclusive. The doctrine of presumptions as matter of evidence will be freely applied by a court of equity where complainants seek to investigate transactions as old as are involved in this cause.

APPELLANT, AS DEFENDANT IN THE COURT BELOW, ENTITLED TO PLEAD AND INSIST UPON LACHES AS A DEFENSE.

The application of the doctrine of laches to a suit may be made by the court itself although it is not pleaded or raised by the defendant, because such doctrine is based upon public policy and upon the difficulties that the court would encounter in settling and determining the rights

of the parties after long lapse of time from the dates of the instruments or transactions involved. In this case, therefore, the court would have the right to consider the application of the doctrine of laches as applied to appellee and those under whom they claim during the whole period of time since the confirmation of the Grant, May 23, 1828.

The defendant, however, in this case has a right to plead and insist upon the application of the doctrine of laches in this cause because it holds title under the deeds sought to be cancelled, to-wit: the deed made in 1852 by the Sheriff and ex-officio Tax Collector and the deed made in 1872, and the defendant, therefore, has every right that the grantee in those deeds and the several deeds following to assert laches as a defense. In the case at bar, in order for the court to determine the questions as to the taxable character of the land and the title by adverse possession by the various grantees named in the deed sought to be cancelled, the court is required to investigate the pedigree of appellees, the status of the parties from the time the Grant was confirmed, the surveys of the land, and the acts of the parties or their failure to act. The doctrine of laches runs through the whole subject matter of this litigation and in order to determine the questions in the case the evidence must be examined by the court covering the transaction from 1828.

LACHES AND THE STATUTE OF LIMITATIONS AFTER ISSUE OF PATENT.

All of the argument of appellees that the doctrine of laches should not be applied in this case refers to a period prior to 1895 when the patent issued from the United States. We insist under the authorities cited in our original brief that the doctrine of laches and Statute of Limitations should be applied in this case as to defendants and those under whom they claim. By reason of their failure to act or delay in acting prior to 1895, the complainants below, who are the appellees here, are barred by laches and delay and Statute of Limitations.

As we have heretofore stated, the patent was obtained in 1895 and no action taken by the appellees in reference to the deeds complained of in this suit until they, or some of them, filed a bill in 1902 to cancel said deeds, and which bill was dismissed for want of prosecution, as stated and set forth in answer of appellant to the bill and as argued in our original bill. Nearly twelve years elapsed between the date of the patent and the filing of the bill in the present cause. This period of time is sufficient to bar the appellees both under the doctrine of laches and under the doctrine of the statutes of limitations applicable to such suits in the State of Florida.

APPELLEES ALLEGE IN THEIR BILL THE TAX DEED FROM JOHN SIMPSON, SHERIFF, TO JOHN STARKE HAS NO SUBSCRIBING WITNESSES, AND WAS NEVER ACKNOWLEDGED OR APPROVED FOR RECORD.

The court below did not pass upon this objection to the deed but based its decree upon the ground that the land was not subject to taxation, but if such objection were now considered, it is not well taken. The laws of Florida then in force did not require subscribing witnesses to said deed.

See Thompsons' Digest, Laws of Fla., Section 1, page 177, copy of which is appended to this brief.

Subscribing witnesses to a deed were not required at common law.

1st Delvin on Deeds, Sec. 255.

(a) There is no evidence that the original deed did not have subscribing witnesses.

(b) It will be presumed after this lapse of time that the original had subscribing witnesses and by error the deed was not properly recorded.

(c) It is to be presumed that the original deed was

acknowledged before the Clerk for record before it was put upon the record, particularly after this lapse of time.

1st Enc. of Ev. 872, 873, 875 and notes.

(d) Even if the paper from John Simpson as Sheriff and ex officio Tax Collector to Starke had no witnesses, and had not been acknowledged, it would not be ordered cancelled because it is an admission in writing by the then Sheriff of receipt of the purchase money from Starke for the property and rate to him and under the law Starke or his grantees would be entitled to deed from the succeeding sheriff reciting the said sale.

Day vs. Adams, 43 Ver., 510.

Vt. etc. Co. vs. Windham, 44 Ver., 489.

(e) The said paper from Simpson, Sheriff, to Starke vested in Starke at least an equitable claim to a title which would authorize the assessment of the property to Starke in 1867 and 1869, as was done.

Under the laws of Florida in force at the time that this deed was made by Simpson, Sheriff and Tax Collector, the succeeding sheriff would be authorized to execute a deed to the purchaser based upon the imperfect deed of his predecessor acknowledging the sale and receipt of the purchase money by the sheriff. The tax deed can be made by the succeeding officer. See the following authorities:

2 Blackwell on Tax Titles, Sec. 754.

3 Devlin on Deeds, Secs. 1411, 1412, 1413, 1414.

Thompson's Digest Laws of Florida, page 329. Sec. 4 Subdivision 2. (Copy appended.)

See also

Section 1682 Gen. Stats. State of Fla. now in force. (Copy appended.)

The testimony of Royal, page 310 of defendant's testimony, shows that it was recognized that this property after its purchase by Starke was known as his. Starke at least had an equitable claim to a title which would authorize the subsequent assessment of the property in his name.

OBJECTIONS MADE BY APPELLEES AS TO DEED DATED APRIL 23, 1872, FROM ROBERT C. PARTIN, TAX COLLECTOR FOR ORANGE COUNTY TO WILLIAM MILLS FOR UNPAID TAXES 1867, 1868, 1869.

The court in its decree found and decreed that this Grant during said years 1867, 1868 and 1869 was not subject to taxation. We have already discussed this subject fully and shown that it was subject to taxation.

The lands were properly assessed to John Starke who had a deed for same from John Simpson as Sheriff above mentioned.

There is no evidence that John Simpson was not in possession of the land, and it will be presumed after this lapse of time that the assessor did his duty and assessed it to John Simpson as being in possession of same.

The bill alleges the lands were described by section numbers 9 to 16 and 1 to 24.

The land covered by this Grant appears to have been twice surveyed, once by Norris in December, 1847, as public lands, and by Williams as private Grant in 1851, and these assessments for the years 1867, 1868 and 1869 were apparently made by sections according to the Norris survey:

Copy of Norris survey attached to the bill of complaint, marked Exhibit "D."

The deed from Robert C. Partin as Tax Collector for Orange County to William Mills describes the land not only by section numbers but also as known as the Grant of Teresa Rodriguez. The plat of Township 19 South, Range 28 East and Township 19 South, Range 29 East, Defendant's Exhibit "1" in this case shows the Grant according to the survey made by M. A. Williams. This plat compared with the plat of the Norris survey, Exhibit "D" to the bill of complaint, would show the numbers of Sections 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 covered by the Grant and mentioned in the deed from Robert C. Partin as Tax Collector to William Mills.

THE APPELLEES ALLEGE IN THEIR BILL THAT PARTIN, TAX COLLECTOR, HAD NO AUTHORITY OF LAW TO MAKE A DEED; THAT THE DEED SHOULD BE MADE BY THE COUNTY CLERK.

(a) The said deed from Robert C. Partin as Tax Collector to said Mills was written evidence and acknowledgment by the tax collector that the said Mills was the purchaser at said sale for taxes, and said paper vested in said Mills an equitable interest in said land and a right to said deed of said property from an officer authorized by law to execute said deed based on such purchase, and, therefore, a court of equity would not cancel the said instrument.

(b) This instrument may be treated as a certificate of sale of the property by the Tax Collector to said Mills.

(c) The answer alleged that the said instrument was good as an evidence of said equitable title or interest of the said Mills and no exceptions were filed to that portion of the answer.

(d) Robert C. Partin as Tax Collector was authorized to issue a certificate of sale to the purchaser, and even if it were necessary to obtain a tax deed from the Clerk the purchaser is entitled to have such tax deed made by a subsequent Clerk, and mandamus would lie to compel the Clerk to make such deed. There is no evidence that the said Mills did not go into possession of the property under this deed, and there is evidence that he sold and conveyed the land to George C. Powell mentioned in the record. This deed from Partin as Tax Collector to Mills would be good as a written acknowledgment of the purchase by Mills and would vest in him an equitable title or a right to a title.

THE APPELLEES ALLEGE THAT THE LANDS WERE NOT ASSESSED FOR TAXES IN THE YEARS 1845 TO 1851, INCLUSIVE, BUT WE INSIST THAT AT THIS DATE THERE IS A CONCLUSIVE PRESUMPTION OF THE ASSESSMENT OF THIS PROPERTY FOR THE YEARS 1845 TO 1851, INCLUSIVE:

(a) The testimony of W. M. McIntosh, Chief Clerk in the Comptroller's Office, with copies of what purport to be portions of the tax books of these years for Orange County, Florida, shows that the books were in many instances in very imperfect condition—in some instances worn and partly destroyed. His evidence also shows that he had no knowledge of whether or not there had been any additional tax books or supplements to these books filed during the said years with which he was not familiar. His acquaintance with the books had only been within the last twenty years.

(b) Entries referred to on the books in reference to grants may have been intended to cover the grant in question. Under these circumstances the Grant would be presumed to have been correctly assessed for these years and the assessment now lost or destroyed.

See pages 155 to 195 inc. of record.

Under the provisions of the tax law in force at that time, to-wit, Subdivision 4 of Section 4, page 97, Thompson's Digest, the Sheriff was authorized to sell this land, upon a return made to him by the Assessor of lands where the owner is unknown or no one in charge of same, and does not seem to require an assessment. This return to the sheriff is evidently in the nature of an execution to authorize the sale of lands where there has not been return for taxation and the owners are unknown. Such lands would not necessarily appear upon the tax rolls.

Under this provision of the tax law in force from 1845 to 1852 inclusive, a return must have been made by the

assessor to the sheriff authorizing the sheriff to levy upon this land. Such return would be in the nature of an execution. This provision is evidently inserted in the law for the purpose of enabling the sheriff to sell lands where the owner was unknown and no one in charge of the lands and no return had been made by the owner to the assessor of the lands for taxation. The law does not seem to require such return by the assessor to the sheriff of this class of lands to be placed upon the assessment rolls, and that accounts for this assessment possibly not appearing upon the assessment roll.

Thompson's Digest, Sub-division 4, Sec. 4.
(Copy appended.)

APPELLEES AND THEIR ANCESTORS, AFTER THE CONFIRMATION OF THE GRANT, MAY 23, 1828, WERE ENTITLED TO TAKE POSSESSION OF THESE LANDS, AND THE ACT OF CONGRESS OF MARCH 3, 1807, PROHIBITING THE TAKING POSSESSION OF UNCONFIRMED GRANTS DOES NOT APPLY.

The history of this Act shows that it applied to Grants under Louisiana Purchase. The Acts of Congress applicable to the Florida Grants, in effect, authorize the grantees to take possession, particularly for the purpose of surveying and locating the Grants themselves.

See Sec. 12 of Act of Feb. 8, 1827, Vol. 4 Statutes at large, page 202
Sec. 1 of Act of May 23, 1828, Vol. 4, Statutes at large, page 284.
Sec. 7 of Act of March 7, 1829.
Also see Sec. 2, Act of March 3, 1823; Vol. 3, Statutes at large, page 754.

The Act of March 3, 1807, which appellees contend prevented them or those under whom they claim from taking possession, was passed on the same date on which an Act was passed for ascertaining titles and claims to lands within the territory of Orleans and Louisiana. Under this last mentioned Act, the surveys were to be made by the Surveyor General, and there is no provision for the claimants making surveys and locations themselves.

See also Act of March 26, 1804, Vol. 2 Statutes at large, page 283, in reference to Grants under the Louisiana Purchase.

The Act of March 3, 1807, referred to by appellees in their bill, being Sec. 476, Revised Statutes U. S., was passed in reference to the Louisiana Purchase, and was nearly fourteen years prior to the ceding of Florida to the United States. This Act refers only to Grants which had not been confirmed. While this Act is by Sec. 9 of the Act of March 30, 1822 extended to Florida, the subsequent Acts of Congress with reference to Grants in Florida have reference to providing for the exercise of certain rights of possession by grantees of such Spanish Grants. This Grant was recognized and confirmed by Act of Congress of May 3, 1828. After the passage of the Act of February 8th, 1827, Section 12 which required the claimants to cause the Grants to be connected with the township lines, and certainly after the confirmation of the Grant by Act of Congress of May 23, 1828, the Acts of Congress prohibiting the taking possession of unconfirmed Grants had no application. This Act of Congress evidently refers to Grants prior to their confirmation, to-wit, while the same were being examined by the Commissioners. The Act does not refer to Grants of perfect title. The titles under these Grants were made perfect by the treaty between the United States and Spain.

See U. S. vs. Percheman, 7 Peters, 82, Book 8 L. Ed. 616.

After the survey by Williams in 1851 and its approval, as shown by defendant's Exhibit "1," to-wit, on the 20th of June, 1851, there could be no question that the Grant was fully recognized, and complainants or those under whom they claim had every right to possession of same.

APPELLEES BARRED BY ADVERSE POSSESSION OF APPELLANT AND THOSE UNDER WHOM IT CLAIMED.

The defendant insists in this case that this suit should not be entertained because it was in possession of the lands in question at the time the bill was filed and that no relief can be granted upon such bill while it, the defendant, is in possession of the lands in controversy.

The defendant further insists that it has title to the property under the statutes of Florida by more than seven years of adverse possession under color of title by it and by those under whom it claims.

See Secs. 1718 to 1722, inclusive, General Statutes of Fla., copy of which is appended to this brief.

The evidence in this case establishes that from about the date of the deed from William Mills to George C. Powell, to-wit, May 3, 1872, until the 27th of October, 1881, the date of the deed from George C. Powell and wife to Henry S. Sanford and for a short time thereafter George C. Powell was in actual possession of this entire grant, except Section 9, and that George C. Powell and George W. Powell were in possession of that part of the Grant. The witnesses for defendant whose testimony was taken for it in reference to the possession of the land by George C. Powell and the acts of possession asserted by him are to the entire Grant and make a complete case of adverse possession from 1872 to 1882. The evidence shows that George C. Powell and his son in law William Slade and his son George W. Powell and his son in law W. P. Lassiter moved on to this Grant early in 1872. They each built small houses upon the land and

George C. Powell and George W. Powell lived on the ground during all of this period of time. Lassiter lived upon the Grant for a part of the time and Slade lived upon the Grant a part of the time. George C. Powell and his sons in law built a mill and mill dam on this Grant in 1872, and it was operated by George C. Powell and by his son in law William Slade and by George W. Powell and one Mitchell and by L. J. Owens, all claiming under George C. Powell, up to the time the property was sold by Powell to Sanford in 1882. This was a saw mill and grist mill and cotton gin. George C. Powell had two different houses on the Grant. His son in law Lassiter had a small place and he and George W. Powell lived on the Grant. His son in law William Slade lived for a time on the Grant. These persons lived on the land and cut logs and other timber used in the mill off the various portions of the Grant, the pine timber off of the western part of the Grant in Sections 16 and 9, particularly, and some cypress for making shingles from the eastern part of the Grant in the swamp. There were small cultivations around the lands occupied by George C. Powell and George W. Powell. They planted orange trees and vegetables and some other crops. They took the material to make fences from off of the Grant, and George C. Powell sold the cedar from the Grant to one White who cut it while George C. Powell was in possession. The horses and oxen belonging to Powell and Slade were raised upon this Grant. The cedar was cut from all over the Grant. The witness Royal and one Owens purchased cypress taken from this Grant from which they manufactured shingles. Cedar and other hard wood were cut out of the swamps by Slade and other persons claiming under Powell. The fence rails were taken largely from the 16th Section. They also took fuel from the Grant. The pine timber taken by Slade while he operated the mill was off the 16th, 9th and 10th Sections of this Grant. It will thus be seen that George C. Powell and those claiming under him from 1872 to 1882 had actual possession of the Grant and exercised actual ownership over the entire Grant.

See testimony of following witnesses: Lassiter, pages 235 to 248 of record; Slade, pages 262 to 288 inc. of record; L. J. Owens, pages 289 to 293 and 325 to 344, 391 to 414; Robert Rose, pages 293 to 309; Alonzo Royal, 309 to 326; Griggs, pages 379 to 384; Ivey Royal, pages 413 to 423 inclusive; Henry B. Anderson, 457 to 480; Ben Anderson, 426 to 435; F. H. Wilson, 434 to 447; J. E. Ingraham, 481 to 488.

This Grant was a well known single tract of land and marked by exterior lines around the entire Grant and was known as the Powell Grant from 1872 to 1882 and no one was in possession of same or claimed same at that time except Powell and those claiming under him. See testimony of above witnesses.

George C. Powell and George W. Powell made sales and conveyances of portions of the Grant and the timber on the Grant and also placed mortgages on the property on record as shown by defendant's Exhibit 6 to 25 inclusive.

Henry S. Sanford acquired title to the property by deeds from G. C. Powell and G. W. Powell and from J. P. Hughey, Clerk, the deeds from the Powells being dated in October and November of 1881. The originals of all these deeds are in evidence. At the time Sanford acquired possession, Mr. J. E. Ingraham, his agent, went upon the Grant and took possession of it and met Powell there who showed him the improvements and the lines of the property. The improvements were a saw mill and orange grove and the small dwellings of his sons. He employed a man to look after the mill and the grove and had the fruit shipped from the grove to the store. Also had the lands surveyed by William Beardall. See pages 481 to 488, inclusive, of the record, also Beardall's deposition, page 954. Rand's testimony on pages 248 to 263, Slade, 269, 270; Owens, 328, 329, 331, 332.

Sanford conveyed the property to the Trustees of the Florida Land and Colonization Company by deed dated the 9th of January, 1884. Ingraham was agent of the company for a short time and then E. R. Trafford was

their agent in charge of their property. Along in 1889 F. H. Rand became their agent and held possession as Trustee for the company or agent for the company until 1900 when the land was sold by the Florida Land and Colonization Company to defendant. See testimony of Ingraham, pages 481 to 488 and testimony of following witnesses, F. H. Rand, pages 248 to 262 inclusive. Rand was the agent of the company from 1887 succeeding E. R. Trafford who is now dead. This company through Rand and Beardall as agent of the company had various employees or agents under them on the land and in charge and possession of it for this company as follows: one Jones was on the Grant, and he and one Thomas were put on there shortly after the survey of the Grant by Beardall. Jones and Rand were there from 1887 to 1892. See Rand's testimony, pages 248 to 262; Slade, pages 269, 270.

Thomas as agent was living upon the property and in charge of it, certainly from 1887 to 1894, and probably between 1884 and 1887 when Trafford and Beardall were agents. See deposition of Beardall stating the company had him survey the land and the company cultivated the grove until the freeze, so that between 1884 and 1887 when Royal became agent, Trafford and Beardall evidently had some one in possession of the property for the company between the purchase from Sanford and 1887 when Rand took charge. Witness Owens testified that Thomas went on the Grant within a month after the survey by Beardall, pages 329, 330. So that Thomas probably was in charge of the land under Trafford and Beardall prior to 1887 and down to about 1894. The following witnesses show the possession by Thomas: Rand, page 250; Slade, pages 269, 270; Owens, 329, 330; Rose, pages 298, 299; Alonzo Royal, 314; Wofford, 345; J. W. Boykin, 364; C. C. Boykin, 385; Ben Anderson, page 427; H. B. Anderson, page 460.

After Thomas, a man by the name of Fig appears to have been on the land in charge of it for the company for a few months. See testimony of C. C. Boykin, 385; L. J. Owens, 334.

After Fig left the property one McIntosh was in charge of the property for the Florida Land and Colonization Company. See testimony of J. W. Boykin, 366; C. C. Boykin, 385, 386; L. J. Owen, 331; Slade, 270; Rose, 299; Royal, 314.

C. C. Boykin succeeded McIntosh as agent and was there for about two years. This was some time prior to 1894. See testimony of C. C. Boykin, 384; J. W. Boykin, 366; Rand, 250; Rose, 299; Royal, 318; Owens, 334.

John Wofford was in possession living on the Grant as agent of the company from about 1894 or 1895 up to 1900 when the Grant was sold by the Florida Land and Colonization Company to Wilson Cypress Company and for about a year after the latter company bought it. See the following testimony: Wofford, 345; Rand, 250; Slade, 270; Rose, 299; Royal, 318; Owen, 335; J. W. Boykin, 369; C. C. Boykin, 389. Each of these agents resided upon the Grant. Thomas resided first in the house formerly occupied by G. C. Powell and afterwards had a house and some cultivation made by himself on the Grant. Wofford had three places on the Grant; McIntosh resided in a small house near the south boundary of the Grant; Charlie Boykin lived in the same house; Wofford had some cultivation around two of the places occupied by him and kept hogs on the Grant. He was on the Grant in 1899 when the witness Slade left that part of the country.

AGENTS OF WILSON CYPRESS COMPANY IN THE POSSESSION OF THE GRANT.

John Wofford was the agent of the Florida Land and Colonization Company in 1900 when the Wilson Cypress Company purchased the property and he continued there for about a year after. See testimony of Wofford, 346; L. J. Owens, 337; C. C. Boykin, 366; J. W. Boykin, 366. L. J. Owens succeeded Wofford in charge of the land as defendant. See testimony of L. J. Owens, 337, 338; J. W. Boykin, 367; J. W. Boykin took charge of the land in

1904, and is still in charge and possession of same as agent of the defendant. See J. W. Boykin, 367; L. J. Owens, 338, 339; Royal, 318; C. C. Boykin, 386, 387. The testimony in substance as to possession of these agents is that Jones was on there with Thomas and probably for a while prior. Thomas had two residences at different times on the Grant, he lived on the Grant, cultivated a small garden, had entire charge of same, and it was while he was on the Grant that the Andersons obtained cedar, timber and palmetto upon the Grant under permission from the Florida Land and Colonization Company.

McIntosh lived with his family in a cottage on the south side of the Grant and had possession and charge of same. Charlie Boykin lived in a small cottage and had possession and charge of the said Grant. The duties of these men were to hold possession and to prevent trespasses on the Grant and to live on it. The same is true of Fig. John Wofford had an actual possession on three different places on the land. See testimony of Owens, and Wofford. He had some cultivation of the land and kept hogs on the Grant. He had actual possession and lived on the Grant and in various parts of it, in the north, center and southeastern part of it and was there until some time in 1901. L. J. Owens followed Wofford as agent for defendant in charge of the Grant and lived near the Grant and posted his notices on the Grant as the property of defendant. He had charge for about three years before J. W. Boykin took charge. No one else was in possession during any of this time except the agents of the defendant and of the Florida Land and Colonization Company. Each of these witnesses testified to this fact. J. W. Boykin took charge in 1904. He built a cabin on the Grant where he spent part of his time and rode over the Grant every two or three days or two or three times a week and kept trespassers off the Grant and held possession of it. He also posted notices on this property as the property of defendant, Wilson Cypress Company. The possession of Thomas was for more than seven years and he actually lived upon the ground.

The possession of Wofford was from 1894 to 1901 and he actually lived upon the Grant and cultivated portions of it. The witnesses Owen, Slade, Wofford and J. W. Boykin located parts of the Grant where Thomas and Wofford lived.

The timber and cabbage palmetto was taken from this Grant by at least three persons under permission of the Florida Land and Colonization Company. See testimony of Rand, 250, 251. Deposition of Beardall, 955, testimony of Royal, 315; Owens, 349; Andersons, 428, 429, 462. The cedar was cut on the east side of the Grant by the Royals and the Andersons cut mostly from the north side and center part of the Grant. The Andersons cut the cedar all over the land but the most of it from the north side or the center of the land. The Andersons also took cabbage palmetto from the land about 1890 and 1891. These were taken mostly from the east part of the Grant from the east end and south side.

It thus appears that from 1872 to 1882 G. C. Powell and his son and sons in law and those operating immediately under them had actual possession of the Grant and exercised actual acts of ownership and possession of the Grant and all over the Grant. From 1882 to 1884 when Sanford held title to the Grant, he and his agents had charge of it and exercised actual possession and ownership over it. From 1884 to 1887 Trafford was the agent of the Florida Land and Colonization Company. He and Beardall had charge of the Grant and exercised possession over it, as shown by the testimony of Beardall and Rand. From 1887 after Rand became the agent the testimony is clear to the actual possession and control of the Grant by the Florida Land and Colonization Company through various agents on the Grant down to 1900 when it was purchased by the present defendant. Since 1900 the defendant has had persons in charge of the Grant.

This Grant was a well known single tract and possession of part was possession of all.

Kendricks vs. Latham, 25 Fla., 819, 834, 835.
Munroe vs. Merchant, 28 N. Y., 1.

THIS CHARACTER OF POSSESSION OF TIMBER LANDS BY AGENTS IS HELD SUFFICIENT TO CONSTITUTE ADVERSE POSSESSION.

See Sloan vs. Sloan, 25 Fla., 53.
Munroe vs. Merchant, 28 N. Y., 1.
Lessee of Ewing vs. Burnet, 11 Peters, 41, 52, 53.
Russell vs. Butler Co., 93 Fed., 304.
Bradley vs. West, 60 Mo., 60.
Bartlett vs. Draper, 23 Mo., 407.
Howett vs. Johnson, 48 Ill., 69.

LOCATION OF HOUSE OCCUPIED BY AGENTS OF DEFENDANT NORTH OF SOUTH LINE OF GRANT.

There is dispute, as shown by the evidence between complainants and defendant as to the location of the house built by defendant on the Grant and occupied by its agent, J. W. Boykin. The complainants insist that it is located south of the true south line of the Grant and not on the said Grant, and defendant insists that it is located within the Grant and north of the south line thereof. A great deal of testimony was taken upon this point, both that of witnesses for complainants and for defendant. The line was run and surveyed by the witnesses, Fries, Beasley and Ginn, on the part of complainants, and witnesses Moorehead, Howard and Owens on the part of defendant, and the witness Robinson, for complainants, testified that he had also made a survey of said south line of this Grant. The witnesses for defendant locate this house about sixty-three feet north of the south line of the Grant. The witnesses for complainants locate this house a few feet south of the south line of the Grant as measured by them. The witnesses for defendant, who testified on this point, are Howard, pages 574, 627, 785, 788, W. A. Morehead, pages 628 and 683, inclusive, L. J. Owen, 682, 719, 798 to 821. These witnesses located the southwest corner of the Grant

by a post marked "XR" at this corner and by the distances measured north and then east to the northwest corner of Section 21 in the same township. This is shown by plat, defendant's exhibit 38, page 1030 of record. And they found a plain old blazed line running east from this southwest corner post. They also located this southwest corner of the Grant by its distance from other corners mentioned in the field notes. The trees on this old blazed line, as found and located by defendant's witnesses, were of old growth and blazes were apparently very old. This old blazed line was followed to a pond and to a spring mentioned in the field notes. These Surveyors, in order to locate this line, located the northeast and southeast corners of Section 21, and also located the northwest corner of Section 21, at which a post was found marked with the figures 21 and other figures, and certain bearing trees were found there and on west line of the Grant. In other words, while the south line of the Grant as located by defendant's witnesses is, according to distance, further south than the distance called for in the field notes, it corresponds with the monuments and natural objects called for by the field notes, namely, the southwest corner of the Grant, as located by them, is marked by a post; the south line as run by them is an old blazed government line, and it crosses the pond and the spring as stated and described in the field notes.

The southwest corner of the Grant, as located by complainants' witnesses, has no post marking it. The measurements used by defendant's witnesses from the said stake found by them at the southwest corner of the Grant and through said pond and spring, natural objects mentioned in the field notes, and on said blazed line claimed by defendant, conform approximately with the distances given in the field notes. The only point relied upon by complainants' witnesses with reference to the line asserted by them to be the south line of the Grant are the distances measured north and south as called for in the field notes, and not the location of corner posts or natural objects or by a very old blazed line. The witness for

defendant, L. J. Owen, who made the survey with defendant's witnesses Howard and Moorehead, had known this Grant since 1880, when he ran a mill owned by George C. Powell. See page 292 of record. The defendant's witnesses insist there are no other old marks or blazed line between the south line of this Grant, as located by the witnesses, and the north line of said Section 21 within the Grant, other than the line located by them as the south line of the Grant. The timber along the line was old growth. The southwest corner post of the Grant as located by them had old marks upon it. The blazes along this old line appear to be made a great many years ago. These witnesses also located some of the corners of Section 20 and the northwest corner of Section 21 and located the pond and spring as called for by the field notes from these corners, and the line located by them as the south line of the Grant crosses the point at about the distance given by the field notes. We, therefore, insist that after this long lapse of time, where apparently an old blazed government line existed as the south line of the Grant, that it should be recognized, particularly where the measurements from natural objects called for by the field notes, locate and verify this as the correct line. It appears, according to the testimony of the witnesses for the defendant, Morehead, Allen and Owen, that the house occupied by the defendant's agent is sixty-three feet north of this old blazed Grant line which corresponds with the corner stake at the southwest corner of the Grant and by measurements with the corners of Sections 20 and 21, as found by these witnesses, and this line is also identified by the blazes on the trees and by its locations with the pond and spring called for in the field notes, although it is located further south than the distance called for in the field notes from the northeast corner of Section 21 to the said south line of the Grant, and which distance is evidently a mistake, and in locating this line now, would yield to these monuments and natural objects and old blazed line found on the Grant.

The original sworn bill of complaint in this case filed

by complainants May 1, 1907, alleged "that the defendant at some time after the date of said alleged deed (referring to deed to defendant) built on said Rodriguez Grant a cabin and has employed an agent, to watch said property and keep the timber which covers said land from being stolen;" that subsequently the complainants filed an unsworn amendment to said bill of complaint maintaining Paragraph 31 of the original bill and omitting the said statement as to said cabin built by defendant. It is proved that at the time of the filing of the bill, complainants and their solicitors had the same information and opinion as to location of the south line of this Grant entertained by defendant and its agents, and that the cabin built by it was on the Grant. This was an admission by complainants made in a sworn bill. The bill prays among other relief for an injunction restraining and prohibiting the defendant from claiming under the deeds sought to be cancelled. The amended bill is not sworn to and this admission if the original bill stands as a part of the record in this case is an admission of fact, made by complainants in the bill. This is particularly important in view of the dispute between the surveyors as to the location of the said cabin and whether or not it is inside of the Grant or just outside of the south line of the Grant.

THE FOLLOWING FACTS ESTABLISH THE CORRECTNESS OF THE LOCATION OF THE SOUTH LINE OF THE GRANT AS TESTIFIED TO BY DEFENDANT'S WITNESSES AND CLAIMED BY DEFENDANT.

They found the southwest corner stake at the point described in their testimony. This stake is called for by the field notes. Pages 583, 584, 585, 586, 602, 633, 634, 651, 677, 678, 685, 686. See defendant's Exhibit 38, page 1031, and Grant Field Notes, 851, 852-3-4.

They found the large stump hole where the bearing tree had been, called for by the field notes. Record, pages 586, 609, 622, 712.

They found a line leading east from the said corner stake which line was evidently a very old blazed line. Record, pages 586, 587, 646, 647, 648, 691, 692, 693, 708, 709.

This line though about four chains further south than the field notes called for, more nearly corresponded with the field notes in every particular as to natural objects, than the line claimed by the complainants. Record, pages 587, 700, 701.

First it crosses a certain grass pond at about but not quite the distance given by the field notes. The evidence shows that this pond lies in a northeast and southwesterly direction—so that although the distance thereto on defendant's line from said stake, is a little greater than that in the field notes yet, necessarily, a line where complainants claim it should be, must vary from the field notes to a still greater extent, because of said pond lying northeasterly and southeasterly. Record, pages 587, 588, 602, 614, 712, 713.

Ginn admits this. Record, pages 763, 764.

The same observation as to the Sulphur Spring run may here be noted, and in this connection we will first request attention to a peculiar expression in said notes. The field notes state that the south grant line crosses the east line of Section 21 in edge of Spring *branch;* they then state that said south line after crossing said east line runs a certain distance to spring *run,* and it is here indicated that the maker had some different meaning for the words *Branch* and *Run,* and this question is of importance in locating said south line as will be seen from the following facts:

The line claimed as south line by said defendant crosses said east line of Twenty-one in the edge of the bank of the spring. The Sulphur Spring is in a sink hole or indentation in the earth. A run or creek emanates therefrom taking a meandering course in a general northeasterly direction. Record, pages 587, 603, 604, 614, 615.

Defendants south line crosses said run at about the distance called for by the field notes, but since said run

takes off easterly as it goes north, a line three or four chains north of defendant's south line, as for instance Complainants' line, will touch said run at a distance varying still more greatly from the field notes. 614, 615, 616, 625, 626, 645, 703, 704, 715.

Now going back to the Spring, there is no other creek or run or branch than the one above mentioned, leading from said spring. How then could the south line of grant cross the east line of 21 in edge of Spring Branch?

It crosses in or very near the brink of a depression in which the spring and run lie. The government surveyor called the depression the Branch and the water itself in the creek at the bottom of the depression the *Run*.

The line therefore crosses east line of Sec. 21 in the edge of *Spring Branch* then continues east to the *Run*. Record 603, 604, 616, 624, 764. Defendant's exhibit 38, page 1031 of Record.

COMMENTS ON THE TESTIMONY OF THE SURVEYORS.

No witness of Complainants denies that the post located by defendant's surveyor is where defendant claims it is, 9.35 South of the North section line of 21.

No witness of Complainants asserts or ventures the surmise that the post has been moved:

No witness of Complainants denies that there is a line of old blazes from said stake East, as stated by defendant's witnesses.

No witness of Complainants denies the correctness of the measurements made by defendant's surveyors from said stake to the grass-pond mentioned in the field notes.

No witness of complainants has denied the correctness of the measurement of defendant's surveyors from said pond to the East line of section twenty-one.

No witness of Complainants has denied the correctness of defendant's surveyor's measurement from said East line of section twenty-one to the sulphur-spring run.

No witness of Complainants has denied that the said

blazed line claimed by defendant as South Grant Line intersects the East line of Section 21 in the edge of a depression or "sink," which is an indentation in the earth in which is situated the sulphur spring and spring run mentioned in the field notes. The field notes evidently refer to the edge of the spring branch as the edge of this indentation and refer to the spring run as the water or creek or stream itself emanating from said spring, because there is but one stream from said spring and no signs of any other ever having been there.

All of said measurements from said stake and from said natural objects on said blazed line claimed by defendant conform approximately with the distances given in the field notes. Ginn admits this as to the pond, spring branch and run. Record, pages 763, 764, 765, 766, 767.

None of that is denied, but it is denied by Complainant that that is the South Boundary line of the Grant.

On the contrary the complainants claim that the real South line is about four chains North of the line claimed by defendant.

The field notes call for the said South line 5.35 chains South of the North line of Section 21, which said section overlaps into said grant and complainants claim that said line is there located. Yet it will be seen from the testimony of both sides that the distances called for by the field notes are not exactly correct on the ground in any instance—see sketch of survey by defendant's witnesses. The length of section lines of Sec. 21 is not correct. The distance from N. W. corner Sec. 21 to West boundary line of Grant is not correct, etc. Record, pages 588, 589, 596, 597, 612, 625, 680, 691, 707, 708.

The defendant claims that it does not matter that the field notes give the distance as 5.35 as above stated, because in fact the line was laid at about 9.49 chains south of said north line of Section 21. And in proof thereof relies upon the fact that the line which defendant claims conforms to the natural objects of the field notes and very closely to distances except the said 5.35, and furthermore relies on the corner stake and ancient blazed lines.

Now let us examine the lines claimed by the complainants as at 5.35 South of said line of Section 21.

Beginning at the West end thereof where the corner stake should be according to the field notes—no stake is found; this is testified to by defendant's witnesses and admitted by complainants' witnesses; complainants never produced a witness who had ever seen any other stake at corner than the one located and claimed by defendant, nor who stated it has ever been anywhere else. There is no bearing tree nor any trace thereof to indicate the location of the corner as called for by the field notes at the point claimed by the complainants as the section corner of the grant This is stated by surveyors' testimony of both sides. It will be here observed that Messrs. Robinson and Beasley, the first surveyors who testified in this case for complainants never mentioned a stake or bearing tree, never mentioned a blazed line at all on their line at 5.35. But later Beasley and Ginn, to off-set the fact that defendant had an ancient line, found blazes on their 5.35 line. Defendant's surveyors say that those blazes are only ten or fifteen years old. Complainants' surveyors do not deny the age of defendant's blazes, but claim theirs are just as old. See Grant Field Notes and Field Notes to Sec. 21, pages 851, 852, 853, 854 and Defendant's exhibit 38, page 1031 of Record.

The attempt to use the Drawdy and Cashen Grants or patents is not permissible because the *field notes* of same are not put in evidence and it is not shown by field notes where those lands should be, with relation to the grant lines, actually on the ground. Record, pages 744, 746, 747.

The evidence of Beasley as to where he located the Drawdy homestead is inadmissible, because he did not prove that his survey was correct by showing and producing the field notes he used as to where the said lands should be located. This is required by the *best evidence Rule*. Record, pages 744-747, inclusive.

COMMENTS ON THE TESTIMONY OF THE COMPLAINANTS' INDIVIDUAL SURVEYORS.

Fries' testimony is in effect that he located the South line according to field notes. Record, pages 552 to 557 inclusive.

Yet Beasley and Ginn admit that they could not locate the Southwest corner stake nor the bearing tree, both called for by the field notes. It is also shown by the evidence that complainants' witnesses could not locate edge of Spring Branch at the intersection of their alleged south Grant line with the East Line of Section twenty-one—yet Fries and Robinson making no exception or qualification, state broadly that they located the line according to the field notes.

They did not find a blazed line there at the point they claimed as the South Grant line—for they *utterly failed to mention it.*

It will be noted at once that the witness Robinson persistently uses the expression that he located the South line "where it ought to be according to the field notes." Undoubtedly he meant that the line he located was "in his opinion" where the South line *ought to be*—but not where it *was actually on the ground.* 557, 558, 561 of Record.

When he said where the South line *ought to be according to the field notes*—he meant according to that distance of 5.35 chains south of the north line of Section 21. Record, pages 557, 558, 560.

Robinson, being pressed, upon cross-examination admits reluctantly that he is testifying entirely upon memory and does not give figures, but merely found everything according to field notes. 563, 564, 565 of Record.

Robinson's memory of his survey was not sufficient to be of value as his cross examination shows. Record, pages 564, 565.

Fries does not mention a bearing tree—does not mention a blaze—does not give a detail of his survey—does not state how he proceeded or what instrument he used—does not mention a natural object on the grant line he claimed

—does not mention a corner stake at southwest corner of the Grant—does not make any statement of any value to inform this Court of anything except his conclusions. Record, pages 552 to 557 inclusive.

His statement referring to the cabin near bottom page 30 of testimony taken February 11, 1911, as follows:

It is located 8 chains 14 links south of section line and therefore south of the Grant line as described in the United States Field notes.

Shows that he reaches that conclusion merely by reference to the distance 5.35 chains called for by the notes and not by actual survey of the lines on the ground. Record, page 554.

Beasley, the second time he testified, is unable to give his measurements in most instances and refers to Ginn who kept the figures and notes. Yet Ginn's testimony shows that he could not give accurate figures and dealt only in approximate terms. Record, pages 730 to 739 inclusive, 764, 765, 766.

PAYMENT OF TAXES BY DEFENDANT AND THOSE UNDER WHOM IT CLAIMS TITLE.

The witness Rand with the tax receipt produced by him establishes the payment of the taxes on this land by him as the agent of the Florida Colonization Company from 1887 until 1900, (see pages 252 to 253). The witness Wilson, Secretary of defendant company, with tax receipts produced by him establishes the payment of the taxes on this land by the Wilson Cypress Company since 1900, (see page 438, 439). There is no evidence in this case that the complainant ever paid any taxes on the land or had any real occupation of the property or made any improvements upon it. The complainants will not be permitted to contend that this property should not bear any part of the expense of the Government where the Grant had been duly confirmed and was identified by the terms of the Grant or identified by location made by

claimants of the Grant as required by law, and certainly by the Williams survey.

Under the statutes of Florida the complainants are not entitled to a decree cancelling the titles of defendant without a repayment of the taxes which have been paid out by it and its predecessors. The decree of the District Court did not provide for this.

See Section 592, General Statutes of Fla., copy appended to this brief.

DEFENSES OF THE STATUTES OF LIMITATION UNDER THE LAWS OF FLORIDA.

The defendant and those under whom it claims title have been in possession of the Grant claiming under written instrument for more than seven years prior to the filing of the bill herein. Under Section 1718 and 1721 of the General Statutes if this bill is treated as an action for the recovery of real property or of possession thereof it must appear that the party was seized or possessed of the premises within seven years before the commencement of the action and the possession of the premises was held to be adverse where they continued occupation and possession for seven years. In this case there was a continual actual occupation by George C. Powell from 1872 to 1882 and by the agents of the Florida Land and Colonization Company from at least 1887 to 1900, their agents residing on the land. Either of those periods of adverse possession would bar the complainants' right to recover this property if this is an action for the recovery of real property. Copies of these Sections of General Statutes of Florida are appended to this brief.

Under Section 1719 Gen. Stats. of Fla., it must appear that the complainants or those under whom they claim are seized or possessed of the premises in question within seven years before the accruing of the right of action as defenses. This suit was brought twelve years after the issuing of patent under which complainants claim and

eleven years after Martin claims to have gone upon the land to take possession for the grantees under the patent. J. P. Owens whom he claims to have made his agent does not in his evidence mention that he even overlooked the lands after 1897 but he left that part of the country so that for ten years before the filing of the bill neither the complainants nor those under whom they claim had any pretense of possession of this property. Copy of said Section is appended to this brief.

The defendant Wilson Cypress Company after 1900 had actual possession of the land for more than a year through J. W. Wofford who is living on the land, and then by having it in charge of their agents L. J. Owens and J. W. Boykin, who lived near to the land, kept trespassers off of it, posted it and had it in possession to the extent that timber lands may be held and possessed when not used for cultivation. The statutes of Florida in describing adverse possession, Section 1721, Gen. Stats., describes such possession where the property is used for the ordinary use of the occupant, or where a known tract has been partly improved, the balance is, according to the usual custom of the country, deemed to have been occupied for the same length of time as the part improved or cultivated. This defendant's occupancy consists in holding timber lands through its agents without actually residing on it, according to the course and custom of the country. This is the only possession that such lands are really capable of. The witness Boykin, however, resided a part of each week in a cabin on the lands, and the Grant being a single tract of land enclosed by exterior boundaries as such, he would be held to have possession of the balance of it.

This being a bill in equity to cancel deed is not an action for the recovery of real property or for the recovery of possession under the statutes of limitation but is an action within the meaning of the said statutes and comes within subdivision 4 of Section 1725, Gen. Stats. Fla., providing for a bar within four years of any action for relief not specifically provided for in said chapter. It has been held by the Supreme Court of Florida in case

of Branch vs. Cole, 18 Fla., 368, that this Section applies to a bill in equity for dower. The court in that case stated that the statutes of limitation of February 27, 1872, was passed while the code was in effect, and, therefore, is intended to cover suits in equity which would be regarded as actions for relief under the code. Under this authority bills in equity that did not seek recovery of the property or possession thereof would be barred within four years under the above mentioned provisions of Section 1725 General Statutes of Florida. Copy of said Section is appended to this brief.

This provision of the statutes of limitation was in addition to the defenses of laches which is in equity a distinct and separate defense and only follows the statutes of limitations by way of analogy.

Special limitations have been provided by the laws of Florida in reference to suits to set aside tax titles. Under Section 20 of the Act of 1872, Chapter 1887, suit to set aside tax title must be brought within one year after the recording of the deed in the county where the lands lie. The same provision is found in Section 63 of the Act of 1874, Chapter 1976, and of each of the Revenue Acts down to the Act of 1879, Chapter 3099, Sec. 61, Laws of Florida. In this Act the limitation is made three years. Copies of said Sections are appended to this brief.

PROCEEDINGS LAND DEPARTMENT IN REFERENCE TO THIS GRANT.

As hereinbefore stated, this Grant was confirmed in all respects by an Act of Congress of May 23d, 1828, and no patent was required under that Act to complete the title in the grantee. The first evidence of any action in reference to this by the persons claiming under Teresa Rodriguez as her heirs is found in the ruling of the Land Commissioners, dated October 29th, 1889, pages 84 and 85 of record. Thereafter, an appeal appears to have been taken to the Secretary of the Interior. See page 847 of record. In November, 1894, this ruling was re-

versed by the Secretary of the Interior. See page 18 of record, and on the 26th of June, A. D. 1895, patent issued from the United States. See pages 841, 842 and 843 of record. This patent in terms is only a relinquishment of title on the part of the United States. On May 28th, 1889, W. D. Bloxham, Surveyor General of Florida, transmitted to the General Land Office the survey of this Grant made in January, 1851, by M. A. Williams and approved the 20th of June, 1851, by B. A. Putnam, Surveyor General, defendant's exhibit 14, page 1027, and certificate, 1028. During all of this time from the confirmation of the Grant by Act of Congress, May 23, 1828, certainly since the said survey of the Grant and approval thereof in 1851, Teresa Rodriguez and those claiming under her appear to have taken no action in the Land Department in Washington in reference to said Grant, and none before 1889, as shown by correspondence above mentioned. The Secretary of the Interior by his final order on appeal in February, 1894, held that the first section of the Act of Congress of May 23, 1828, confirmed this Grant, and that the grantees had title to the entire area of acreage contained in the Grant. Under this ruling of the Secretary patent issued, by reason of which complainants claim title to this land. This final ruling of the appellate tribunal controls. Where a right of appeal existed from the ruling of the Commissioner of the Land Office to the Secretary of Interior, such appeal must have been prosecuted and the final determination of the question had by the Secretary. No action has ever been taken by the United States or anyone else to question this finding or ruling by the Secretary of the Interior. The effect of this ruling clearly is that the Grant conveyed to Teresa Rodriguez and her heirs the complete title to the property by the terms of the Grant, and certainly under the confirmation by Section 1 of the Act of Congress of May 23, 1828, in reference to Florida land claims. Therefore, the mere fact that some claim was attempted to be asserted by subordinate officials of the Land Department of the United States never

did affect the title in the eye of the law in and to this land. From the date of the confirmation by Congress of the Grant, it is plain that the title was in the grantee. No patent was necessary to vest the title, and the property was clearly subject to taxation. The court below in its final decree (see page 97 of record) decided that these assessments having been made prior to the issuance of patent and while the validity of the Grant was denied by the United States, through its duly organized Land Department, that the tax deeds were void. The court in its opinion, pages 91 and 92 of record, holds that the Department did not recognize the Grant as confirmed until the issue of the patent, and, therefore, that the land was not subject to taxation. We submit that this is an erroneous construction of the law bearing upon this case. The mere fact that a mistake was made by the subordinate officials of the Department as finally determined by the Secretary of the Interior in reference to the true construction of this Grant and the Act of Congress bearing thereon did not and could not in law change the title or affect the title. The title as finally determined by the Secretary was in Teresa Rodriguez and her heirs from the date of the confirmation by Act of Congress of May 23, 1828. No holdings by the Land Department prior to February, 1894, the date of the Secretary's ruling, would affect the title to the property in law or render it not subject to taxation. Whether or not this land was subject to taxation by the State of Florida from the date of its organization as a State in 1845 depended upon whether Teresa Rodriguez and her heirs had title to the land under the Grant as confirmed and not upon the erroneous rulings, if any, made in the Land Department. This is a vital error in the opinion or decree of the court in this case. The same reasoning applies to the attempted conveying of part of this Grant by the United States to the State of Florida, and which was reconveyed by the Trustees of the Internal Improvement Fund of the State of Florida to the United States. (See page 835 of record.) All of these actions were simply errors

in the Land Department. When the land was assessed for taxes by the State of Florida, it was the duty of Teresa Rodriguez or those claiming under her to either recognize that assessment and to have paid the taxes or to have filed their bill and to have enjoined sale for taxes, or after such sale and deed thereon, to have filed their bill to cancel same in the courts, and thereby tested in the courts whether the lands were subject to taxation or not. It was further their duty to have prosecuted proceedings in the Land Department immediately after the survey of 1851, if they deemed it necessary to obtain any recognition of their title by the Land Department in Washington or patent thereon, but they did not pay any taxes to the State of Florida and permitted these lands to be sold for taxes of 1845 to 1851, inclusive, and again in 1872 for the taxes of 1867, 1868 and 1869. They took no action in the court to test their title and rights, and they took no action in the Land Department until 1889, as shown by these records from the Land Department. It cannot under these circumstances be held that because erroneous rulings were made in the Land Department about the title that the lands were not subject to taxation and no title passed under these tax sales or that Teresa Rodriguez and those claiming under her were justified in waiting this great number of years down to 1889 before endeavoring to obtain any ruling in reference to this Grant. Such, however, is the effect of the opinion and decision of the court below in this case, and, we submit, is clearly erroneous. No reason is shown in the record why the same final ruling of the Secretary of the Interior as to this Grant would not have been made at any time after May 23, 1828, the date of the confirmation of the Grant, if the claimants thereof had prosecuted proceedings in the Land Department in reference to said Grant to a final hearing, and it is plain, therefore that such claimants were not justified in law in delaying the commencing of such proceedings until October, 1889, and thus only obtaining this ruling on February 18th, 1894. The final ruling of the appellate tribunal must control,

and is in this case declaratory that Teresa Rodriguez and those claiming under her had title to this land, certainly from the 23d of May, 1828.

As to the effect of the ruling of an appellate tribunal see

Roberts vs. Lewis, 153 U. S., 367.
Colham Gold Mining Co. vs. Ojax Co., 182 U. S., 499.

Where a right of appeal existed from the ruling of the Commissioner of the Land Office to the Secretary of the Interior, such appeal must have been prosecuted and a final decision of the questions obtained from the Secretary before parties claiming under Teresa Rodriguez would be authorized to contend that the title under the Grant was not complete after the confirmation made by the Act of Congress of May 23d, 1828.

For the effect of the ruling of the Secretary of Interior see:

Knight vs. U. S. Land Assn., 142 U. S., 161, 216.
McGuire vs. Tyler, 1 Black., 195.
Buena Vista vs. Iowa, 112 U. S., 165.
Williams vs. U. S., 138 U. S., 514.
Lee vs. Johnson, 116 U. S., 48.

The Secretary of Interior's ruling and final order in this case is simply a declaratory statement of meaning and effect of terms used in the Act of Congress in reference to this Grant, and such effect and term existed at the time the Act was passed and at every period thereafter. No action has ever been taken by the United States or anyone else to question this final ruling of the Secretary of the Interior in this case. Complainants claim under the confirmation of the Grant by Act of Congress of May 23, 1828, and under this ruling of the Secretary of the Interior construing said Act of Congress. The patent of Teresa Rodriguez relied upon by complainants recited the confirmation of the Grant by the first Section

of the Act of May 23, 1828. The complainants claim under this confirmation of the Grant and the patent of Teresa Rodriguez recites said confirmation, and therefore, complainants are estopped from contesting the fact that the Grant was confirmed by Section 1 of the Act of Congress of May 23, 1828, and as they took title under that confirmation and under the said ruling of the Secretary of the Interior, neither would be subject to review at the instance of complainants in this case. The Grant was confirmed by Section 1 of the Act of Congress of May 23, 1828, and it is, therefore, immaterial when the ruling of the Secretary of the Interior was made to that effect. So far as the questions involved in this case are concerned as to the Grant being subject to taxation and the complainants being barred by laches and the statutes of limitations and the adverse possession of defendant and those under whom it claims, the court in its opinion and decree in the court below erroneously holds that the land is not subject to taxation on account of these subsequent proceedings in the Land Department, and further holds that by reason of said proceedings that the occupation and possession of defendant and those under whom it claims title is not valid and the statutes of limitations do not apply, and that no title could be acquired by adverse possession. See pages 92, 99 and 100 of the record for court's opinion as to laches. The court below in its opinion, found on pages 92 and 93 of the record, holds that laches does not apply where the parties have been and are making every reasonable and diligent effort to ascertain and enforce their right, and efforts that have been made by the owners and holders of patents prevent the bar of laches during the length of time that has elapsed. We submit to the court that the Grant was confirmed by Act of Congress of May 23, 1828, and no effort appears to have been made by Teresa Rodriguez or those claiming under her, as shown by this record, until 1889 in reference to taking action in the Land Department as to this claim. All the tax deeds and sales that are attacked in this case accrued prior to 1889. No reason

existed why Teresa Rodriguez or those claiming under her should not have taken action in reference to this claim prior to 1889, or action in the courts to cancel these tax deeds and sales at any time after same was made, as shown by the authorities hereinabove recited. It is, therefore, apparent that the parties claiming under this Grant were not diligent in endeavoring to protect their rights or to test the validity of these tax sales and tax deeds, and the bar of laches plainly apply to same. It further appears that even from the date of the order of the Secretary of the Interior in 1894 or from the date of the patent in 1895 up to May 1, 1907, when this bill was filed, that a period of twelve or thirteen years had elapsed, and only two days less than seven years had elapsed from the time the deed to defendant was made until the bill in this cause was filed. All of the periods of time between the dates of the transactions sought to be contested in this case and the date of the filing of the bill are such that the doctrine of laches distinctly applies to this case. The court further states in its opinion that defendant was shown to have had ample notice of the existence of the efforts of the complainants to obtain this patent before it was issued. We submit to this court that this is a mistake. The only evidence on this point is that of the witness Martin, whose deposition in reference to this matter is found on pages 827 and 832, and certain letters, pages 833 and 834. The witness Martin does not in this deposition pretend to have had any dealing with the defendant. He states, on page 827, he had some little correspondence with Mr. Wilson, but does not state what Wilson, or what connection, if any, he had with defendant, nor is there any proof of same. He states, on page 82, that he had some correspondence with Mr. Wilson, but did not regard them as dealings; that he took Mr. Wilson to be the head of the company from the character of some conversation. The first of these letters is found on page 33 and is dated February 20, 1896. The patent in this case to Teresa Rodriguez, under which complainants claim title, is dated the 26th of June, 1895, and re-

corded January 7th, 1896. See page 92 of record. There is therefore, no evidence in this record that the defendant had any notice of any efforts of complainants, or anyone else, to obtain confirmation of the Grant. Mr. Henry Wilson, named in this correspondence, appears to have discovered some months after the issue of this patent and its record in the Land Office and after its record in the printed records of Lake County, Florida, that said patent had been issued to Teresa Rodriguez and those claiming under her. The second letter of Mr. Wilson, page 84 of record, is dated February 10, 1898. From both of these letters it is apparent that Mr. Henry S. Wilson is seeking to buy the property himself, and nothing is said in said letters or in the deposition of Martin to show any action by the defendant company in connection with the said Martin, or any notice to the defendant company of any claims of complainants or of persons claiming under Teresa Rodriguez. Mr. Wilson had precisely the same notice that every one else had from the record of the patent already issued and recorded. If it were true that the defendant company had notice prior to the issue of the patent that the complainants or those under whom they claim were seeking to obtain a patent from the United States, it would not in any way affect the application of the doctrine of laches to this case. The laches had occurred long before Mr. Wilson ever heard of the Grant or of any claims thereto. There is also no proof in this record that Mr. Wilson ever represented the defendant or communicated these matters to the defendant or its officers. Even if he was shown to be an officer, the knowledge of one officer is not the knowledge of the company.

1 Morowitz Corporations, Sec. 540, B. & C., page 5134, Note 1.
Waynesville Bank vs. Irons, 8 Fed. Rep., page 1.

By reason of the effect of the doctrine of laches and the effect of the statutes of limitations, complainants could not have maintained any suit against the persons or corporations under whom defendant claims title. The

title to those under whom defendant claims had been settled as between them and these complainants long before the defendant bought the property in favor of the persons from whom defendant purchased. In other words, complainants could not have maintained a bill against either defendant or those under whom defendant claims, on account of laches, delay and the statutes of limitations which had accrued prior to the issue of the patent.

The District Court also refers to a suit brought in 1904 and dismissed on account of alleged unavoidable matters. The answer of the defendant in this case states that that case was dismissed by reason of the failure of the complainants, or those under whom they claim, to furnish their then counsel with the evidence on which to prosecute the claim. As we have heretofore shown in this brief, the permitting it to be dismissed does not avoid the effect of the doctrine of laches. If it was the fault of complainants and those under whom they claim, or their counsel, that that suit was dismissed, the bringing of that suit is of no effect to excuse laches, and is only a further evidence of the abandonment of the claim by complainants themselves in not furnishing the evidence to their counsel to prosecute the suit. See pages 1031-1034 of the record in reference to the dismissal of this suit. We submit that the District Court erred in its opinion and in its decree in thus holding that on account of any circumstances in this case the laches and delay and abandonment would not bar the right of complainants to maintain this bill.

THE DOCTRINE OF ESTOPPEL AS APPLIED TO APPELLEES.

In this case, the appellees claim title to the lands in question under a patent from the United States, which is founded upon the Grant from Spain to Miguel Marcos, and confirmation of that Grant by Congress by the Act of May 23, 1828. Teresa Rodriguez, under whom appellees claim, asserted before the Commissioners appoint-

ed to examine these Grants in Florida that this was a valid Spanish Grant. The Commissioners reported favorably the Grant as a valid and unconditional Grant. Congress, by the Act of May 23, 1828, confirmed it as such Grant. Appellees and those under whom they claim asserted before the Land Department from 1889 to the date of said patent that this was a valid Spanish Grant and that it was confirmed by the Act of 1828 and that it had been surveyed by M. A. Williams in 1851. On the basis of these claims and assertions, made before these tribunals, the patent was issued, and appellees now claim to have title to the land, and such title was procured upon these claims and representations made by those under whom appellees claim. The appellees now seek in this suit to claim and contend that according to the true unit of measure, to-wit: the Spanish *Vara,* this Grant contained more than a league square and was not a confirmed Grant by the Act of May 23, 1828, and, therefore, that it was not subject to taxation. The appellees also contend and claim in this suit and in the brief of their counsel in this case that the Grant was a conditional Grant, dependent upon subsequent occupation and a survey and the issuing of some further muniment of title by the Spanish Government. These positions taken by appellees and those under whom they claim before the Land Commissioners and in the Land Department in reference to this Grant, and on which they obtained their patent, are entirely inconsistent with the contentions of appellees and their counsel in this cause in reference to the taxable character of the property. These parties will not be permitted to assume such antagonistic positions before the various tribunals where this grant is in question. If the appellees were entitled to a patent to this land as a confirmed Grant, the land was clearly subject to taxation. Appellees cannot be allowed in a court to assert, on the one hand, that the land is not subject to taxation because it was a conditional Grant and because it exceeded 4,438.68 acres, and at the same time to assert in the Land Department that it was a complete Grant confirmed by the

Act of Congress of May 23, 1828 and surveyed in 1851, and upon such contentions to obtain this patent from the United States. These positions are absolutely contradictory.

Appellees are estopped by taking benefits under decision that Grant was confirmed by Act of Congress of May 23, 1828, and by having themselves, or those under whom they claim, taken that position before Land Department to obtain the patent.

The Maricopa & Phoenix R. C. vs. Arizona, 156 U. S. 347, 349.
Daniels vs. Turney, 102 U. S., 415.
Gibson vs. Lyon, 115 U. S., 439.
Davis vs. Wakelee, 156 U. S., 680.
Michels vs. Armsted, 157 U. S., 198.

The appellees are estopped to change the position taken by them or those under whom they claim before the Commissioners to settle land claims and before the Interior Department of the United States as to the character of this Grant and to take inconsistent positions in this cause in order to sustain their contention that the Grant was not subject to taxation. Appellees are not permitted to assume inconsistent positions in proceedings in the courts in reference to the same property or to the same questions of title.

See above authorities.

APPELLEES BOUND BY RECITALS IN THE PATENT UNDER WHICH THEY CLAIM PATENT FROM THE UNITED STATES TO TERESA RODRIGUEZ AND HER HEIRS AND ASSIGNS.

(found on pages 839 to 843, inclusive, of the record.)

This patent recites the claim as reported as Claim No. 22 in Report No. 3 of Private Land Claims in East Florida, dated December 31, 1825. Copy of said Claim No. 22 and Report No. 3 is found on page 969 of the

record. Under the head "Conditions of this Grant" in said report, it is stated that there are "none," and the claim is reported as valid. The patent further recites that this claim was confirmed not to exceed a league square by the Act of Congress approved 23rd of May, 1828. The patent further recites that the description is taken from the "approved field notes of the survey thereof as executed by M. A. Williams, the Deputy Surveyor, in the month of January, 1851, under his contract with Benjamin A. Putnam, Surveyor General of Florida, of the 19th of October, 1850." Then follows the description of the Williams survey. A copy of this survey and plat is found on page 1027 of the record and is shown to have been examined and compared with field notes and approved the 20th of June, 1851, by B. A. Putnam, Surveyor General. The certified copy in the record, page 1027, was dated May 28, 1889, signed by W. D. Bloxham, Surveyor General, as then being a part of the files of said office, and is also certified by the Commissioner of the General Land Office by certificate dated March 19, 1901. See page 1028 showing that the same was then at that date a part of the official records of the Land Department. This patent, therefore, adopts the Grant as a Grant reported as valid by the Commissioners and as approved by the Act of Congress of May 23, 1828, and adopts the survey of M. A. Williams made in January, 1851. These appellees cannot claim title under the patent based on this Grant and its confirmation and this survey as recited in the Grant, and also claim that it was a conditional Grant and the conditions had not been complied with and it was not a confirmed Grant because it exceeded a league square. Appellees are bound by the confirmation of the Grant effected by the Act of 1828, and it is established that this was a valid unconditional Grant and was a confirmed Grant certainly since May 23, 1828.

As to Effect of Recitals under Patent.

U. S. vs. Reading, 18 How., 1.
Marsh vs. Brooks, 8 How., 223.
Bigelow on Estoppel, 5 Ed., 371, 374, 375.

OPINION OF SECRETARY OF INTERIOR UNDER WHICH PATENT ISSUED.

We attach to this brief a copy of opinion of the Secretary of the Interior in reference to confirmation of this Land Grant, dated February 12, 1894. This opinion and ruling would have been obtained by appellees or those under whom they claim many years prior to 1894 if they had prosecuted their claim with diligence, and they are not justified in delaying commencing these proceedings until 1889 and only obtaining this ruling in February, 1894. The decision of the Secretary of the Interior was in reference to what was intended by Congress by the term used in the Act of May 23, 1828, to-wit, "a league square" and by what measure Congress intended that such league square should be ascertained. The Secretary of the Interior in his opinion refers to numerous instances and authorities where the *arpen* or *arpent* was held to be the unit of measure for Spanish Grants in 1815 when this Grant was made, and in 1828 when this Act of Congress was passed, and that by this unit of measure a league square contained 6002.50 acres. The Secretary cites authorities showing that a Grant of land in Louisiana of a league square contains 6002.50 acres determined by the French unit of measure, the arpen, and he quotes James & Dennis Quinnilty, 1 Land Decision, 275; also testimony of Walker Gilbert, Maxfield Ludlow, Mr. Briggs et al in the claim of Gabriel Winter et al, American State Papers, pages 260, 261; also the case of Cummyns vs. Latimer, 2 Fla., 71, of a Grant in West Florida, which was measured by an arpent; also White's New Recopilacion, Vol. 2, p. 376, and he holds that in the Spanish possessions of Louisiana and West Florida the French *arpen* or *arpent*, not the Spanish *vara* controlled in the measuring of land, also cites White's New Recopilacion, Vol. 2, page 261, setting forth a letter from Estrado, the Spanish Governor of East Florida, dated July 29, 1811, in which he speaks of a Grant measured by acres according to the English Statute measure which was then usual in the province, and that Florida Grants were reduced from

acres to arpens, citing White's New Recopilacion, Vol. 2, page 378, and on authority and principle he determines that a league square, as understood by Congress at the time of the passage of the Act of May 23, 1828, contained 6002.50 acres. The Secretary further holds that the *vara* as a unit of measure was not considered or known to Congress in dealing with Spanish Land Grants until after the acquisition of California and New Mexico. So that the idea that a Grant of a league square contained 4438.68 acres was not known or the practice in 1828 when the Act of Congress was passed, and the decision should rest upon what was understood to be a league square at that time. In any event, as we have hereinafter stated, the appellees in this case asserted this same contention before the Land Department and obtained benefits under this decision, to-wit, that the Grant was confirmed by the Act of May 23, 1828, and it is so recited in the patent under which they claim, and they cannot, in order to have the land escape taxation, assert in this cause a different and contrary doctrine or claim. The Secretary in this opinion which is dated February 12th, 1894, orders this Grant patented according to the then survey which was the Williams survey made in 1851 and approved in 1851. This opinion and order are *prior* to the alleged approval of the survey by Milton, Surveyor General, dated June 18th, 1894.

We submit that the decree of the District Judge, appealed from to the United States Circuit Court of Appeals for the Fifth Circuit, found on pages 97 to 102 of the Record, was erroneous, and that the judgment of the United States Circuit Court of Appeals for the Fifth Circuit affirming said decree, found on pages 1039-1040 of the Record, is erroneous, and that the said decree and judgment should be reversed.

John C. Cook

Solicitor for Appellant.

219850
B.
M. F. H.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE

WASHINGTON, D. C., Sept. 9, 1909.

I HEREBY CERTIFY that the annexed copy is a true and literal exemplification of the original in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

H. W. SANFORD,
Recorder of the General Land Office.

(SEAL UNITED STATES
GENERAL LAND OFFICE.)

Vol. 15, No. 341. J. I. P.
J. I. H.

M. L. 219850 E. S. B. B.
February 12, 1894.

PRIVATE LAND CLAIM of TERESA RODRIQUEZ. } FLORIDA SPANISH LAND GRANT.

The Commissioner of the
General Land Office,

Sir:

On April 3, 1890, your office rendered a decision, in the matter of the above entitled claim, declining to issue a patent thereon, for the reason, as stated, that the same had never been confirmed. An appeal by the heirs of Teresa Rodriguez brings the matter to this Department.

The lands within the limits of this grant have been surveyed in Twp. 19 S. Rs. 28 and 29 E., in Florida. The claim was presented to the Board of Land Commissioners in Florida for 5500 acres, and contains, according to said survey, $5\frac{86.46}{426.82}$ acres.

Briefly stated, the history of this grant is as follows:

On October 18, 1815, one Miguel Marcos, first sergeant and sub-lieutenant by brevet of the First Corps, Royal Artillery, detached to the city of St. Augustine, petitioned Estrado, the then Spanish Governor of Florida, to grant him "in absolute property" 5500 acres of land, which was vacant, on the two banks of a creek, which comes from the west and discharges itself into the river St. John, about two miles to the north of a lake known as "Long Lake" and the mouth of said creek, called "Big Spring."

The petition was based on the military and public services of the petitioner, especially during the rebel-

lion of 1812, and the further ground that he was married and charged with children.

On the same day the petition was presented, viz: October 18, 1815, Estrado issued the following decree with reference thereto:

> "Let there be granted to the interested, on the terms which he solicits, the lands indicated in this memorial, in virtue of the several royal orders, which authorize to that effect; and that he may be able to prove this concession in any event, let the necessary certificate be delivered to him from the Secretary's office.
>
> (Signed) Estrado."

On December 1, 1823, Teresa Rodriguez, widow of the petitioner and grantee, presented said claim to the Board of Land Commissioners created by law to ascertain claims and titles to land in Florida.

On December 16, 1825, said Board rendered the following decree:

> The Board having ascertained that the foregoing is a valid concession for the 5500 acres of land made to Miguel Marcos, do therefore recommend it to Congress for confirmation, and said claim was on the same day reported to Congress for confirmation.

All of the proceedings herein referred to are found at page 471, of Vol. 4 of Green's American State Papers. In the petition for confirmation of said claim, filed before the Board of Land Commissioners, by the widow of Marcos, it was stated that the claim had never been surveyed. No survey was, in fact, made until 1850, when the number of acres contained therein was *shown to be as above stated.*

The matter was brought to the attention of your office by the urgent insistence of the widow and heirs of Mar-

cos, for the issuance of patent on said grant, which resulted in your office decision of April 3, 1890.

It was urged before your office by the grant claimants, that said grant was confirmed by the first section of the act of May 23, 1828 (4 Stat. 284) the argument being that the grant contains a less quantity than a "league square."

The construction placed on said first section by your office is, that the "league therein mentioned must be understood to mean a Spanish league, and that a league square by that measurement would contain 4438.68 English acres; that as this claim has been surveyed so as to include 5426.82 (86.46) acres, which was in excess of a Spanish league by 988.14 acres, it did not come within the confirmatory provisions of section one of the act of May 23, 1828, *supra*.

The provisions of that section are as follows—

> That the three claims to land in the district of West Florida, contained in the report of the Commissioners, and numbered four (4), eight (8), and ten (10), excluding from the latter the land contained in certificate, and in the plats A. and C. and the claims contained in the reports of the commissioners of East Florida, and in the reports of the receiver and register, acting as such, made in pursuance of the several acts of Congress providing for the settlement of private land claims in Florida, and recommended for confirmation by said commissioners, and by the register and receiver, be, and the same are hereby, confirmed to the extent of the quantity contained in one league square, to be located by the claimants, or their agents, within the limits of such claims or surveys filed, as aforesaid, before the said commissioners or receiver and register, which location shall be made within the bounds of

> the original grant, in quantities of not less than one section, and to be bounded by sectional lines.

In connection with the section quoted, should be considered the second section, which provides as follows:

> That no more than the quantity of acres contained in a league square, shall be confirmed within the bounds of any grant; and no confirmation shall be effectual until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated, a full and final release of all claim to the residue contained in the grant; and where there shall be any minors incapable of acting within said territory of Florida, a relinquishment by the legal guardian shall be sufficient; and thereafter the excess in said grants, respectively shall be liable to be sold as other public lands of the United States.

The question involved turns very largely upon the construction of the sections quoted, with reference to the meaning of the expression a "league square."

Another question which presents itself, and which for convenience is here stated, is, that the sixth section of the act of May 23, 1828, *supra*, provides that all claims to land within the Territory of Florida, for a greater amount than that confirmed by the sections quoted, shall, on the petition of the claimant, be received and adjudicated by the Judge of the Supreme Court of the district in which the land lies. And section 12 of said act provides, that any such claim not brought before said court by the claimant within one year from the passage of said act, and if so brought, shall not be finally disposed of, on account of the delay of the claimant, within two years, shall be forever barred, both at law and in equity, and no other proceedings, either at law or in equity, shall ever be sustained thereafter in any court whatever. Hence it would appear that if this grant does not come within

the confirmatory provisions of sections one and two of said act and no proceedings have been instituted under section six of said act (which evidently have not been done) it is forever barred by the provisions of section twelve. (Jesse Fish, 16 L. D., 550.)

What did Congress mean by the expression, "a league square," in the sections quoted, for it is only by ascertaining the legislative intent that the correct interpretation of that expression can be reached.

A careful and diligent search through the Supreme Court decisions with reference to Florida and Louisiana private land grants, has failed to reveal any decisions of that tribunal on the questions involved. It appears to be a new question for judicial investigation, and hence not only of unusual interest, but of unusual importance as well.

It is proper to remark in passing that the act in question is not one that confirms, or attempts to confirm, any grant or grants as made; were it such, the area of those grants would have to be determined by the same measurement used by the government making them.

This proposition is too well established to require a reference to authority in support of it.

This act therefore is independent and original legislation by Congress, with reference to the private grants therein mentioned, not because of any treaty obligations or in compliance therewith but manifestly for the purpose of quieting the disturbed conditions then existing in Florida with reference to unsettled and unconfirmed private claims. Without reference to the quantity of land originally contained in said grants as made, Congress seeks to confirm all those mentioned in the act to the extent of a "league square" and no more, and in determining what that extent is, the rule mentioned as obtaining in the confirmation of grants as made, does not of necessity control.

One of the rules laid down by Sutherland for the construction of statutes is as follows:

> Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense; * * * and technical words, pertaining to any science, art or trade, in a technical sense. * * * * If the words of the statutes are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. * * * *. They should be construed with reference to their generally accepted meaning at the time of the passage of the act, and if reenacted, will be deemed to be adopted in their original sense. (Sutherland on Stat. Const., Sec. 247.)

Again:

> Words in common use and not technically employed, in a statute which is intended to be understood and practiced upon by the people, should be construed according to their popular meaning; *that such was the intention of the legislature is the only intendment that ought to be adopted.* (Id. Sec. 251.)

The word "league" used by Congress in the Act has a well known English and American meaning. Webster defines it as follows: "A measure of length or distance equal in England and the United States to three geographical miles; *used chiefly at sea.*"

It is defined in the Century Dictionary as "An itinerary unit now in English used as a *marine league.*"

Worcester says of it that "It is a measure of distance used chiefly in reckoning *distances by sea*, being three geographical miles, or about 3.45 English or Statute miles."

It is evident, therefore, that the word "league" in the English and American sense, is a technical word, pertaining to the science of navigation and nautical measurements, and under the rule above quoted must be understood and applied in that sense. So applying it, the con-

clusion cannot be escaped that Congress did not use the word "league" in the English and American sense; otherwise, it would be in the attitude of directing the ascertainment of land areas by nautical measurement. Hence we must look further to ascertain the legislative intent.

Another rule for the construction of statutes, applicable to the one under discussion, is stated by Sutherland as follows:

> In order to ascertain the purpose or intention, if it is not clearly expressed in a statute, or that such purpose or intention will be carried into effect, the court will take notice of the history of its times when it was enacted. It is needful in the construction of all instruments to read them in view of all the surrounding facts. To understand their purport and intended application, one should as far as possible, be placed in a situation to see the subject from the maker's standpoint, and study his language with that outlook. Statutes are no exception. (Sutherland on Stat., Const., Sec. 300.)

This rule is cited by the Supreme Court in the case of the United States vs. Union Pacific Railroad Company, 91 U. S., 72, the Court saying, with reference to the construction of statutes, that "courts may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it."

Again, the principle is laid down in the case of the United States vs. Freeman, 3 How., 556, that "statutes relating to the same person or thing, or the *same class of persons or things*, should be taken into consideration in construing a law." Applying these principles, it will be remembered with reference to the history of the times when the act under consideration was passed that Congress at that time and for a quarter of a century prior thereto had been engaged in the adjustment of private

land claims in the Territory of Louisiana acquired by the treaty of April 30, 1803, from France. From 1762 to October 1, 1800 that vast territory was owned by Spain, and a vast majority of the private land grants that under the treaty of April 30, *supra*, were to be protected by the United States, were Spanish Grants. It is also a well known historical fact that, with the exception of the period between 1736 and 1783, when it belonged to England, Florida from 1536 to 1819, when it was purchased by the United States, was a Spanish possession. From 1783 to 1800 then both Florida and Louisiana belonged to Spain. From 1762 to 1800, a period of thirty-eight years, all the grants made in Louisiana were Spanish grants, and from 1783 to 1819, a period of thirty-six years, all the grants made in Florida were Spanish grants. Now it appears that in disposing of the public domain in Louisiana the Spanish authorities were governed by a statute or ordinance, known as the "regulations of O'Reilley," the eighth article of which provided that no grant, in certain localities, should exceed one league square. (Chouteau's Heirs vs. United States, 9 Peters, 147; White's New Recopilacion, Vol. 2 p. 228-231.) This seems to be the beginning of the practice of limiting grants to a *league square* in the Spanish possessions of America. The Act of March 3, 1807 (2 Stat., 440) Section four, provides for the examination by the commissioners appointed for that purpose of claims to tracts "not exceeding the quantity of acres contained in a league square."

The confirmatory acts of April 12, 1814 (3 Stat., 122) of April 29, 1816 (3 Stat., 328) and of February 5, 1825 (4 Stat., 81) all declare that no person shall be entitled to more than a "league square." True, this legislation was concerning grants in Louisiana, but they were Spanish grants, of the "same class" as those confirmed by the act under discussion. Many of them were made at a time when both Louisiana and Florida were Spanish possessions, and in the absence of any definite information it would be reasonable to presume that a uniform system

prevailed in provinces contiguous to each other. It was known when this act was passed that a tract of land in Louisiana a league square contained 6002.50 acres, determined by the French unit of measurement, the *arpen* (James and Dennis Quinnilty, 1 L. D., 275.). See also testimony of Walker Gilbert, Maxfield Ludlow, Mr. Briggs, et al., in the claim of Gabriel Winter et al., American State Papers, pages 260 and 261.

The case of John Doe on Demise of Florentio Cummyns et al. vs. W. K. Latimer, et al., 2 Fla. Reps., 71, was the case of a grant in West Florida, petitioned and allowed for *800 arpents* of land, while a Spanish province, and it incidentally appears that other grants had been made in that province for *3500 and 7000 arpents.*

White's New Recopilacion, Vol. 2, p. 376, shows that the grants of the public domain in West Florida from 1801 to 1805 amounted to *99,884 arpents, 98 perches.*

Same authority, p. 378, refers to a grant of land, in East Florida, of 289,645 5-6 English acres, which, says the surveyor of the province who makes the report, amounts to *342,250-7 arpents.*

These references are made for the purpose of showing beyond all question or cavil, that in the Spanish possessions of Louisiana and West Florida the French arpent (or arpen) and not the Spanish *vara* controlled in the measurement of lands.

In dealing with the Spanish grants in Louisiana Congress knew that a league square meant 6002.50 acres, and when it came to dealing with Spanish grants in West Florida, it knew that the same rule obtained; hence, with its knowledge of the popular and general understanding of the meaning of the term, in the once Spanish province in that section, there is no reason to believe that it intended a league square to mean any less quantity of land in East Florida than it did in Louisiana and West Florida, or that a Spanish grant of a league square in one province should have any advantage over a similar grant in the other. Had such been the intent, it would certainly have been expressed in the language of the acts. As it is, the

confirmatory acts with reference to grants in Louisiana and Florida are substantially identical in language, and it will be kept in mind that they are of the same class.

In the particular act under discussion, it will be observed that certain grants in West Florida and those in East Florida are confirmed to the "extent of the quantity of a league square"; no distinction is made between the two divisions; the same quantity is confirmed in each.

Now, there is no question but that a "league square" in West Florida contained 6002.50 acres of land, and that Congress knew it when it passed the act in question, and if it had intended it to have any other or different meaning with reference to East Florida, it would have so stated in the act.

It would indeed be a singular construction, that would give to the expression a "league square" in the act under consideration one meaning in West Florida, and another in East Florida, in the absence of any expression to that effect in the context of the act.

The decision of your office that this question must be determined on the basis of the Spanish unit of measurement known as the *vara* cannot to my mind be sustained by the facts in the case. The *vara* as a unit of measurement does not appear to have been considered by or known to Congress in its dealing with Spanish land grants until after the acquisition of California and New Mexico, which was twenty years after the passage of the act under discussion; hence Congress could not have intended to use the *vara* or any other Spanish measurement because it had no knowledge of such measurement when this act was passed, and because that measurement had not been used by Spain herself in her Floridian provinces. But there is another weakness in that argument. It seems to have been the policy of Spain to adopt the unit of agrarian measurement used by the sovereignty that preceded her, and on her acquisition of East Florida she adopted the English unit of measurement.

White's New Recopilacion, Vol. 2, p. 261, sets forth a letter from Estrado, the Spanish Governor of East

Florida, to the Captain General of the Spanish provinces, dated July 29, 1811, in which he speaks of a certain grant that had been petitioned for, saying that "it would comprise, 6,500,000 acres, *English Statute measure, which is usual in this Province.*"

In conformity to that rule, this grant was petitioned and allowed for 5500 acres.

The conclusion, however, that a *Spanish league* was meant, is at variance with and repugnant to every fact and circumstance in the history of Spanish grants in the provinces mentioned, and in the legislation of Congress in relation thereto. Indeed, the authorities are conclusive on the question that in neither Louisiana nor the Floridas was the Spanish unit of measurements used. And it seems that when it was desired to reduce the acres mentioned in the East Florida grants to a more familiar unit of measurement, they were reduced to *arpens.* (See White's New Recopilacion, Vol. 2, p. 378, above cited.)

In view of the facts herein presented, I am unable to escape the conviction that in passing the act of May 23, 1828, *supra* Congress intended to deal with Spanish land grants in East Florida as it had with those in Louisiana and West Florida, and to confirm to the grantee in the former territory the same quantity of land it has confirmed to those in the latter; that a "league square" of land as understood by Congress, as well as by all those concerned, in reference to private claims, in either of those territories, at that time; meant a tract of land containing 6002.50 acres; that such was the generally understood meaning of that term; and that if Congress had intended the expression used in the act of May 23, 1828, *supra*, to have any special or different meaning, with reference to East Florida, it would have so expressed it in said act.

If, however, it should be contended the word "league" used in the act under discussion meant an "English league" of 3.45 English statute miles, then a "league square" would contain 11.9 square miles, or 7516 acres,

which is more than the number of acres contained in the claim here involved.

It follows, therefore, that this claim in question, containing, as shown by the survey, 5426.82 (86.46) acres, is less than a league square, and is confirmed by the first section of the act of May 23, 1828, *supra*.

Your office decision rejecting said claim, because not confirmed, is therefore reversed, and you are directed to patent said claim in accordance with the survey thereof.

The papers transmitted by your office letter "B" of April 30, 1890, are herewith returned.

Very respectfully,

HOKE SMITH,
Secretary.

COPIES OF LAWS OF FLORIDA REFERRED TO IN THIS BRIEF.

Thompson's Digest:

Sec. 2—Paragraph 2.—(Page 90)—It shall be the duty of the Assessors, so appointed and qualified in each county in this State, to proceed immediately after the first day of January in each and every year, to take down and assess the taxable property in his county as prescribed in this act; and on or before the first day of March, to make out three books in alphabetical order of all the taxable property in his county, one of which books he shall forward to the comptroller of the treasury, one other of said books he shall deliver to the sheriff of his said county, and the other book he shall deliver to the board of county commissioners of his said county: PROVIDED, that this present year the assessors in each county shall proceed forthwith, after having complied with the requirements of the ninth section of this act, to assess the taxable property in their respective counties, and shall make returns as prescribed in this section, on or before the first day of October.

Sec. 2—Paragraph 5.—(Page 91)—It shall be the duty of every person to render to the Assessor of taxes in the county in which such property lies, a correct list of all the taxable property he, she or they may own in said county, or may be possessed of liable to taxation, as provided in this act; which list shall contain an enumeration of all such property in his, her, or their possession, as aforesaid, within said county; and in the list of lands, a particular description of the situation and quality of the same, and to which class it belongs, and also such lots in any town, city or ville, with the description thereof and the improvements thereon, and such as are unimproved, also the amount of his, her, or their stock of [illegible]ds in trade, on the first day of January, and of mone[illegible]ned out at interest, shares of bank stock, and share[illegible] incorporated companies, cattle, and all other property and

things subject to taxation, as provided for in this act, next preceding the time of rendering such list; and the assessor shall state in the last columns of his book, the total amount of taxes due from such person.

Sec. 2—Paragraph 6.—(Page 91)—In case any person shall neglect or refuse to deliver to the Assessor, within the county in which such property subject to taxation lies, a list of all the property he, she, or they may own or hold in possession, in said county, as prescribed in this act, within the time limited for taking such list of taxable property, the person or persons so refusing or neglecting, shall pay double tax on all such property as he, she or they may possess or hold in possession, according to the best information concerning the same which the Assessor can obtain; and every person rendering a list of his, her or their property liable to taxation, shall certify under oath that the list contains a true and correct description and account of all the property, real and personal, subject to taxation according to the provisions of this act, of which he or she is possessed in the county of———, either in his or her own right, or in right of his wife, or as agent, attorney, executor, administrator or guardian, or for the use of any other person, or persons whatsoever; and any person who shall possess taxable property in any county other than the one where he or she resides, and shall have no agent or attorney therein, shall transmit a list of such property, certified as aforesaid, to the Assessor of the county where such property lies, but if the county line shall run through any tract of land whereupon any person resides, the owner or proprietor shall give in the same and all the property subject to taxation thereon, to the Assessor of the county where such owner, proprietor, agent, etc., resides; and any person who shall refuse, or neglect to comply with any of the requisitions herein contained, shall be doubly taxed in manner aforesaid; nevertheless, it shall be the duty of the Assessor diligently to seek out and list all the property liable to taxation in his county, to the best of his skill and ability.

Sec. 2—Paragraph 8.—(Page 92)—The Assessor of taxes shall have the power, and it shall be his duty to assess any taxable property that may come into his county between the first day of January and the first day of March, under the same rules and regulations as are provided in other cases: PROVIDED, that such property shall not have been assessed in any other county of this State.

Sec. 2—Paragraph 9.—(Page 92)—If the Tax Assessor shall fail to execute his bond as prescribed in this act, or if executed it shall not be approved, or if from any cause whatever the taxes of any county in this State shall not be assessed agreeably to the provisions of this act by the first day of March, it shall be the duty of the Sheriff of such county to proceed forthwith from the date of such defalcation to assess and list the taxes of such county; and in all counties of this State wherein the taxes have not been assessed as prescribed in this act by the first day of March, it shall be the duty of the Sheriff of every such county where such defalcation has occurred, to proceed forthwith to have the taxes assessed in such county, in the same manner as the Assessors are required by this act to perform such duty, and to do and perform all such acts and duties as are herein prescribed for the County Assessors to do and perform and to receive the same emoluments and compensation as are allowed to County Assessors.

Sec. 3—Paragraph 1.—(Page 93)—The Sheriffs of the several counties in this State, shall be ex-officio collectors of the taxes in their respective counties, as well for county as State purposes; and each and every Sheriff in this State shall, before he proceeds to the collection of the taxes in his county, execute a bond, payable to the State of Florida with two or more good and sufficient securities, to be approved by the Board of County Commissioners of such county, in double the amount of the taxes assessed in such county agreeably to the tax-book returned; which said bond shall be in addition to such Sheriff's official bond, and shall be conditional for the

faithful collection and payment of the taxes for his county, as hereinafter prescribed and directed in this act, and shall be transmitted by the said Board of County Commissioners of such county, with the Assessor's bond, to the Comptroller of the Treasury of this State, to be filed for safe keeping in his office.

Sec. 3—Paragraph 2—(Page 93)—Each and every Sheriff or Tax Collector in this State, shall, before he enters upon the duties of his office, in addition to the oath prescribed by the Constitution, take and subscribe the following oath before a justice of the peace of such county: "I, A. B., do solemnly swear (or affirm) that I will faithfully collect the taxes assessed in county, and should it come to my knowledge that any property or subject of taxation in my county has not been assessed according to law, I will assess and collect the tax on the same, and pay over all moneys collected by me, as prescribed by law; and will well and truly discharge my duty as Sheriff or Tax Collector for my said county, as prescribed in this Act or may hereafter be prescribed by law, to raise a revenue for the State of Florida, to the best of my skill and ability. So help me God." Which said oath shall be endorsed on the back of the said Sheriff's bond, given and approved as aforesaid, and sent with said bond to the Comptroller of the Treasury of this State. And any Sheriff who shall collect any tax in his county before he shall have executed the bond, and taken the oath as hereinbefore described and directed, shall be deemed guilty of a high misdemeanor, and liable to indictment, and on conviction thereof, shall be fined in a sum not less than double the amount of taxes so improperly collected, and imprisoned not less than two months, at the discretion of the jury; and moreover, shall be dismissed from the office of Sheriff of his county, and shall never thereafter be capable of holding the office of Sheriff or Tax Collector in any county in this State.

Sec. 3—Paragraph 5.—(Page 94)—If the Assessor of Taxes, in any county in this State, shall have omitted or neglected to assess the taxable property, or any part

thereof, within his county, it shall be the duty of the Sheriff to assess and make due and full return of all such taxable property omitted or neglected to be assessed, and to collect and account for the same as other taxes are directed to be collected and accounted for by this act; and if for any cause whatever the taxable property of any county in this State shall not be assessed as directed in this act by the first day of March in each and every year, it shall be the duty of the Sheriff of every such county, where no assessment has been made, to proceed forthwith to assess and make return of all such property liable to taxation, in the same manner as the Assessor should have done, and to receive the same compensation that the Assessor was entitled to receive; and then to collect and account for the same as is provided in other cases for the collection and payment of taxes by this act.

Sec. 4—Paragraph 3.—(Page 96)—Any Sheriff who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof, a deed of conveyance, which deed shall be good and effectual to vest in the purchaser or purchasers all the right, title, interest, claim and demand whatsoever, of the person from whom such taxes are due, which he or she had in and to such real estate, either in law or equity, and deliver to him or them immediate possession thereof; and in every such deed the sheriff making the same shall recite the consideration, and that the real estate thereby conveyed was sold for taxes; but no deed, executed in manner aforesaid, shall be recorded until the expiration of one year from the date thereof, but may nevertheless be proved; and if the person whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors, or administrators, or his or her agent or his or her heirs, executors, or administrators, or his or her agent or attorney shall, within the year, tender to the purchaser or purchasers, or his, her, or their heirs, executors or administrators, or his, her, or their agent or attorney, or in case of his, her, or their absence from the State, then to the Sheriff who sold and con-

veyed such real estate, the consideration money paid for the same, and the amount of all subsequent taxes that shall have been paid on such real estate, with interest on all such sums from the dates of such payment at the rate mentioned in the twenty-fifth section of this act until such tender be made, then the deed executed for such real estate, thus sold and conveyed, shall be thereby vacated and made void, and the deed given up.

Sec. 4—Paragraph 4.—(Page 97)—In all cases where there shall be any property liable to taxation in any of the counties, and there shall be no owners or other person having charge of the same, it shall be the duty of the assessor to return the same from the best information that he can obtain, and such return shall be sufficient to authorize the sheriff to proceed to collect the taxes due on said property, in the manner specified in the following section.

Second Division—Chapter 1—Sec. 1. (Paragraph 1. —(Page 177)—No estate or interest of freehold, or for a term of years of more than two years, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments, shall be created, made, granted, conveyed, transferred, or released, in any other manner than by deed in writing, sealed and delivered in the presence of at least two witnesses, by the party or parties creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of years, or by his, her, or their agent thereunto lawfully authorized, unless by last will and testament, or other testamentary appointment duly made according to law; and that from and after the day and year aforesaid, no estate or interest, either of freehold or term of years, other than terms of years for not more than two years, or any uncertain interest of, in, to, or out of any lands, tenements, messuages, or hereditaments, shall be assigned or surrendered, unless it be by deed sealed and delivered in the presence of at least two witnesses, by the party or parties so assigning or surrendering, or by his, her, or their agent thereto lawfully authorized, or by the act and operation of law.

Sec. 4—Paragraph 2.—(Page 329)—The sheriffs of each county shall, at the expiration of their respective terms of office, turn over to their successors, by schedule, (taking their receipts for the same), all such writs and processes as shall remain in their hands unexecuted, and their successors in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and their securities, shall be liable to make such satisfaction, by damage and costs, to the party aggrieved, as he, she or they, shall sustain by reason of such neglect or refusal; and every sheriff, at the expiration of his said appointment, shall also deliver up to his successor, the bodies of all persons which he holds in confinement by legal process, with the precepts, warrants, or causes of such confinement; and the succeeding sheriff shall be empowered, and is hereby required to sell, and carry into effect any levy made by his predecessor in office, in like manner as the former sheriff could have done, had he continued therein; and shall make titles to the purchasers for all the property sold under execution, or other process, and not conveyed by his predecessor.

GENERAL STATUTES OF FLORIDA, 1906.

Sec. 1682 (1254) (page 679)—*Expiration of his Term.*—The sheriff shall, at the expiration of his term of office, turn over to his successor by schedule (taking a receipt for the same) all such writs and processes as shall remain in his hands unexecuted, and his successor in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and his sureties, shall be liable to make such satisfaction by damage and costs to the party aggrieved as he shall sustain by reason of such neglect or refusal; and the succeeding sheriff shall be empowered, and he is hereby required, to sell and carry into effect any

levy made by any predecessor in office in like manner as the former sheriff could have done had he continued therein, and shall make titles to the purchaser for all the property sold under execution or other process and not conveyed by any predecessor.

Sec. 592 (page 339)—*Party recovering land must refund taxes paid and for improvements.*—When a recovery is had by any person or corporation of any land sold for taxes under this act, who has not, prior to the sale, paid the taxes thereon for which the land was sold, the person or corporation having such recovery shall pay to the party from whom recovery is had all taxes he has paid upon the said land at the time of sale, and the redemption money thereupon, together with all taxes he has paid since said sale, with eight per cent. interest thereupon; also the value of all permanent improvements made upon said land bona fide. The amount due for taxes paid, redemption money and improvements upon the land to be found upon trial or hearing when the recovery is had.

Sec. 1718. (1287) (page 700)—*Action for the recovery of real property.*—No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action.

Sec. 1719. (1288) (page 700)—*Actions founded on the title to real property.*—No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose titles the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defence in respect to which such action is prosecuted or defence made, or un-

less it appear that the title to such premises was derived from the United States or the State of Florida, within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of the title from the State or the United States.

Sec. 1720. (1289) (page 700)—*Possession by legal owner presumed.*—In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action.

1721. (1290) (page 700)—*Adverse possession under color of title.*—1. Continued occupation for seven years required.—Whenever it shall appear that the occupant, or those under whom he claims, entered into possesion of premises under the claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment for seven years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

2. *Definition of Possession and Occupation Required.*—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied, in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for the ordinary use of the occupant; or

4. Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

1725. (1294) (page 703)—*Limitations.*—Actions other than those for the recovery of real property can only be commenced as follows:

* * * * * * * 4. *Within Four Years.*—Any action for relief not specifically provided for in this chapter.

LAWS OF FLORIDA, 1869 TO 1875.

Section 20, Acts of 1872, Chapter 1887 (page 44).—No suit or proceedings shall be commenced by a former owner or claimant, his heirs or assigns or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns or legal representatives to recover the possession of said lands unless such suit or proceedings be commenced within one year after the recording of such deed in the county where the lands lie, except upon the grounds that the said lands were not subject to taxation or that the taxes were paid or tendered, together with the expenses chargeable thereon before sale, and the recording of such deed shall be deemed such assertion of title or such entry into possession by the grantee, his heirs or assigns, as to authorize such suit or proceedings against him or them as for an actual entry;

PROVIDED, That infants, persons of unsound mind or under guardianship or imprisoned, may commence such suit or proceedings within one year after such disability shall cease.

Sec. 63, Acts of 1874, Chapter 1976. (Page 27)—No suit or proceeding shall be commenced by a former owner or claimant, his heirs or assigns or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns or legal representatives, to recover the possession of said lands, unless such suit or proceedings be commenced within one year after the recording of such deed in the county where the lands lie, except upon the grounds that the said lands were not subject to taxation or that the taxes were paid or tendered, together with the expenses chargeable thereon before sale, and the recording of such deed shall be deemed such assertion of title or such entry into possession by the grantee, his heirs or assigns, as to authorize such suit or proceedings against him or them as for an actual entry; PROVIDED, That infants, persons of unsound mind or under guardianship or imprisoned, may commence such suit or proceedings within one year after such disability shall cease.

Where land is bid off by the collector for the State, the tax certificate shall be issued by the collector to the State, in the name of the Comptroller, and if the land is not redeemed within the time specified by law, the State shall be entitled to a deed for the same to be issued by the county clerk in the manner provided by law, and said deed shall be issued to the State. The validity of any sale for taxes under this act, or of any title acquired by, through or under such sale, shall only be affected or questioned by alleging and proving that the property sold was not subject to taxation, or that the taxes had been paid before such sale, or that the property so sold had been redeemed acording to law.

Acts of 1879, Chapter 3099, Sec. 61. (Page 37).—No suit or proceeding shall be commenced by a former owner or claimant, his heirs or assigns, or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns, or legal representatives, to recover the possession of said lands, unless such suit or proceedings be commenced within three years after the recording of such deed in the county where the lands lie; PROVIDED, That infants, persons of unsound mind, or under guardianship, or imprisoned, may commence such suit or proceedings within one year after such disability shall cease. When a recovery is had by any person or a corporation of any land sold for taxes under this act who has not prior to the sale paid the taxes thereon for which the land was sold, the person or corporation having such recovery shall pay to the party from whom recovery is had all the taxes he has paid upon said land at the time of the sale, and the redemption money thereupon, together with all taxes he has paid since said sale, with eight per cent. interest thereupon; also the value of all permanent improvements made upon said land bona fide. The amount due for taxes paid, redemption money and improvements upon the land, to be found upon the trial or hearing when the recovery is had.

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Supreme Court of the United States

OCTOBER TERM, 1914

No. 135

WILSON CYPRESS COMPANY
Appellant

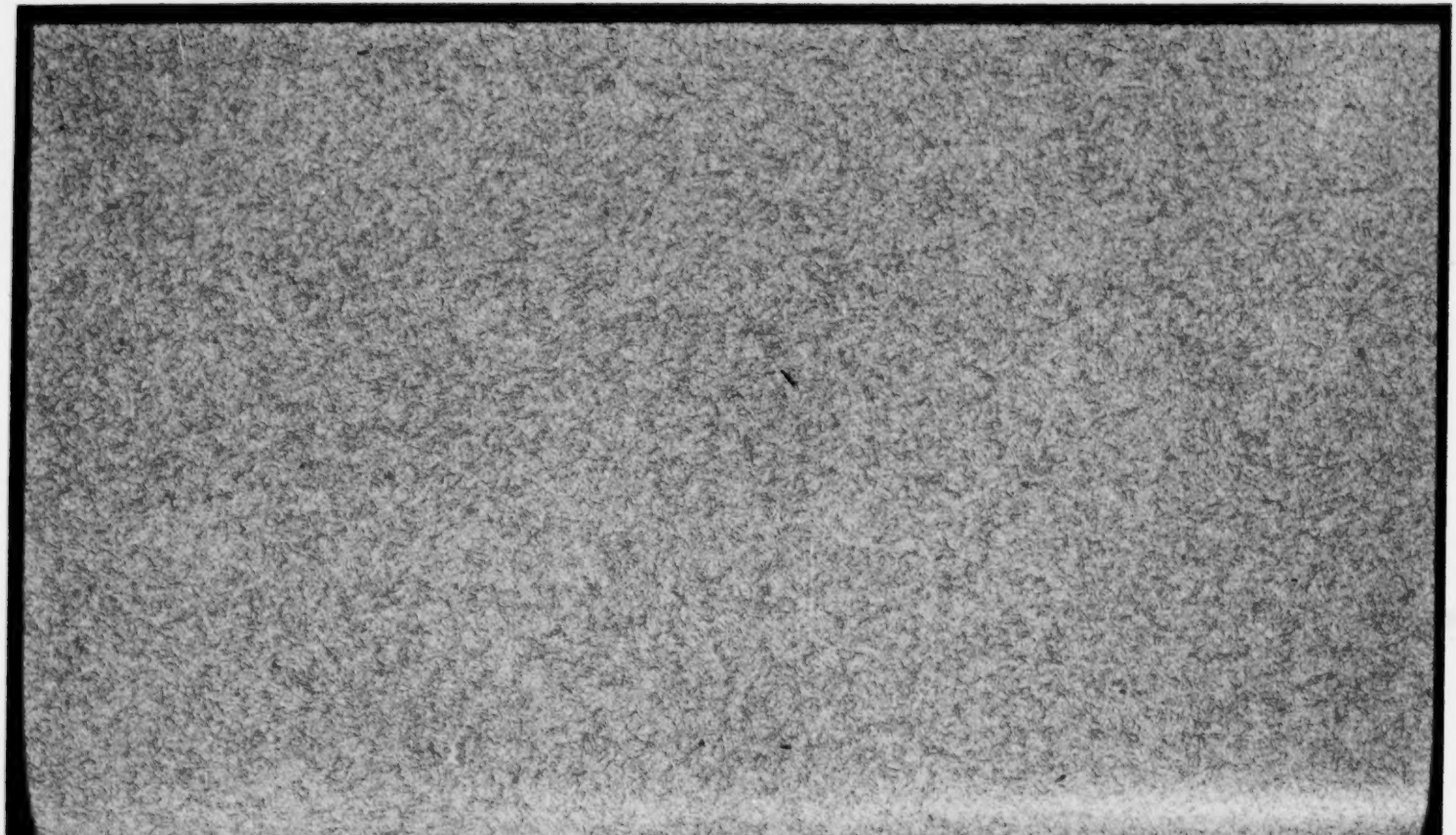
vs.

ENRIQUE DEL POZO Y MARCOS, *et al*,
Appellees

Motion to Affirm and Brief in Support of the Motion

WILLIAM W. DEWHURST
JOSEPH H. JONES
JOHN C. JONES
Solicitors and Counsel for Appellees

BAKER PRINTING HOUSE, PORTLAND



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Supreme Court of the United States.

October Term, A. D. 1914.

No. 135

IN THE SUPREME COURT OF THE UNITED STATES
October Term A. D. 1914

WILSON CYPRESS COMPANY *Appellant* v. ENRIQUE DEL POZO Y MARCOS ET AL *Appellees.*	No. 135

The appellees in the above stated cause by their counsel, move this Court:

To affirm the decree of the United States Circuit Court of Appeals for the Fifth Circuit, which is sought to be reviewed by the appeal herein, on the ground that the rulings, decision and decree of said Circuit Court of Appeals are obviously correct; that it is manifest that the appeal was taken for delay only, and that the questions on which the decision of the cause depends are so frivolous as not to need further argument.

WILLIAM W. DEWHURST
of St. Augustine, Florida
JOSEPH H. JONES
JOHN H. JONES
of Orlando, Florida
Solicitors for Appellees.

SUPREME COURT OF THE UNITED STATES
October Term A. D. 1914

WILSON CYPRESS COMPANY
Appellant
v.
ENRIQUE DEL POZO Y MARCOS ET AL
Appellees.
No. 135

Sirs: Please take notice that appellees in the above entitled cause on the 19th day of October A. D. 1914, at 12 o'clock noon, or as soon thereafter as counsel can be heard at the Supreme Court room in the City of Washington in the District of Columbia, will move the Court on the record herein:

To affirm the decree of the United States Circuit Court of Appeals for the Fifth Circuit which is sought to be reviewed by the appeal herein, on the ground that the rulings, decision and decree of said Circuit Court of Appeals are obviously correct; that it is manifest that the appeal was taken for delay only; and that the questions on which the decision of the cause depends are so frivolous as not to need further argument.

Together with this motion appellees serve upon Appellant a copy of their brief to be filed in the Supreme Court in support of the said motion.

Dated at Portland, Maine, September 21st, A. D. 1914.

WILLIAM W. DEWHURST
of St. Augustine, Florida
JOSEPH H. JONES
JOHN H. JONES
of Orlando, Florida
Solicitors for Appellees.

To MESSRS. JOHN C. COOPER, Jacksonville, Florida.
E. E. HASKELL, Palatka, Florida
Solicitors and Counsel for Appellant

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1914.

No. 135.

Brief on Behalf of Appellees.

If upon the record in this case appellant shall succeed in making it clearly to appear that appellees by the statement of their cause of action in the now District Court sought the jurisdiction of that court upon averments that the suit arose under the Constitution or laws of the United States or under a treaty made under their authority, yet the decree rendered therein by the Circuit Court of Appeals for the Fifth Circuit should be affirmed without argument, as manifestly correct.

Facts in the Case.

The facts set out in appellees' bill of complaint as they appear in the record are set forth in the statement of the case in the brief submitted by appellees herein upon the motion to dismiss this appeal.

The case made by appellant's answers to the bill and amended bill is as follows:

The answer of appellant to the Bill in substance is as follows:

The answer denied that complainant's title was derived from the United States and alleged that appellees' title vested during the sovereignty of Spain; denied that the lands were never segregated from the King's domain, and alleged that by the grant from Spain the lands were segregated from the King's domain; demanded proof that no survey thereof had ever been made during the sovereignty of Spain: denied the grant from Spain vested only on equitable right or claim in complainant's ancestors; alleged that a complete title to the lands was in complainant's ancestors or one of them, at the cession of Florida; denied that the title to the lands was ever in the United States, and alleged the lands were at all times (always) subject to taxation, from the time Florida was ceded by Spain. Paragraph 1 of the answer —the record, pages 35-36-37—alleged that the grant was made in full property by Spain to Marcos; was duly confirmed by the United States, and vested title in Teresa

Rodriguez, without further acts to be done, and without the issuance of a patent. Paragraph 5 of the answer—record, page 39—that without reference to the quantity of land in the grant the title vested in complainant's ancestor by the grant from Spain; that whether or not the United States ever made a survey of the lands in nowise effected the title in complainant's ancestors, but that such title was a complete title by virtue of the grant and its confirmation by the United States. Paragraph 6 of the answer—the record, pages 39-40—alleged the lands were surveyed by the United States prior to A. D. 1845 and prior to their sale for taxes in 1852. Paragraph 6 of the answer—the record, page 40—denied that the act of March 3, 1807, had any application to the grant. Paragraph 6 of the answer—the record, page 40—alleged that complainants were estopped by their patent from questioning the survey made by the United States mentioned in the order for their patent made February 12th, 1894; further alleged that no survey was necessary to render the lands subject to taxation, because the grant was sufficiently defined and the title thereto was full and complete when the taxes thereon under which the tax sale in 1852 was made, were assessed. Paragraph 7 of the answer—the record, page 41—alleged that no claim of (to) the lands by the United States affected the title of Teresa Rodriguez, and those claiming under her, but the full title to said lands was vested in Marcos by the grant from Spain and in Teresa Rodriguez by the grant and its confirmation. Paragraph 8 of the answer—the record, page 42—denied that in A. D. 1852 the United States had the possession or the legal title, or claimed to be the owner of the lands, patented to complainants. Paragraph 9 of the answer—the record, page 42—alleged that even if the United States claimed ownership of the lands and treated them as public lands, it did not effect the power and authority of the State of Florida to assess the lands for taxes, the title being as alleged in Teresa Rodriguez at the time of its assessment for taxes in A. D. 1867, 1868, 1869. Paragraph 10 of the answer—the record, page 44, and paragraph 11 of the answer—the record, page 45—denied that the lands were claimed by the United States as public lands and alleged as a matter of law that the title to the lands was not in the United States after the 3rd of May, 1872, when some part of one section of

604 acres was occupied by one Powell under a deed from the tax sale purchaser, Mills; that no claim of the United States (to ownership of the lands) prevented the real owners from bringing action against one in occupancy of the lands. Paragraph 13 of the answer—the record, page 47—denied that the United States ever refused to recognize the grant, and alleged the grant was fully confirmed March 3, 1826, and the title then vested in (complainant's ancestor), Teresa Rodriguez; that a survey thereof was made in A. D. 1847 under which survey complainant's claim title, denied the survey as a private land claim did not become effective to segregate the lands from the public domain until June 18, 1894, and alleged that for the purposes of taxation the lands were segregated when the treaty ceding Florida was made, and at the time of the confirmation of the grant; alleged again that no survey was necessary to effect a segregation of the lands (from the public domain of the United States) but if a survey was necessary the same was made in A. D. 1847, or prior thereto. Paragraph 20 of the answer—the record, pages 55 and 56—denied that complainants were first entitled to possession of the land June 26, 1895 (the date of their patent), denied said lands were on that date first subject to taxation; alleged those claiming under Teresa Rodriguez were entitled to possession of the lands from the date of confirmation by Congress, and that the lands became subject to taxation from the date of the cession of Florida or from the date of the confirmation of the grant (from Spain). Paragraph 20 of the answer—the record, page 56—alleged the title under Marcos and Teresa Rodriguez was a complete and perfect title under the grant from Spain as confirmed by the United States, and was in no wise effected by any patent of the United States; admitted that on June 25, 1895, the patent to the heirs of Teresa Rodriguez issued, and was thereafter recorded in the county where the land lies, but alleged the title to the grant was vested in the patentees under the grant from Spain under the Treaty, before the issuing of the patent, which was but a recognition by the United States of the title executed under Spain, and that the patent did not in and of itself vest the title. Paragraph 21 of answer—the record, pages 57 and 58—again alleged no patent was necessary to evidence title in complainants and that it was immaterial whether any patent was issued; that

regardless of the recitations of the patent as to the date of the survey, a survey of the lands in suit was made before the tax sale thereof in A. D. 1852; denied the bill correctly stated the law in reference to the effect of the grant from Spain, and title thereunder in paragraph 37 (should be 36, see the record, pages 20 and 21), denied that title to the lands was in the United States prior to the approval of the survey thereof by the Surveyor General of Florida June 18th, 1894. Paragraph 23 of the answer—the record, page 59—denied that the tax sales were made while the United States claimed ownership of the lands, denied that the United States claimed ownership of the lands at the time the tax sales were made and alleged that if the United States during the time claimed ownership of the lands they were subject to taxation. Paragraph 2 of the answer to the amended bill—the record, page 83.

The answer further charged appellees with laches in suing and set up a title by alleged adverse possession, claiming to be in possession, and that appellees' remedy was at law.

Appellant's Real Defense.

As set out in the brief for appellees upon the motion to dismiss appellant's real defense was based upon the law of Spain, and the Revenue law of Florida, while appellees in their bill claimed title under the patent from the United States upon an inchoate claim, or first concession from Spain, confirmed by the act of Congress in conformity to the 8th article of the Treaty, the object of which was declared by this Court in United States *v.* Kingsley, 12 Pet. text 483, to have been to secure the incomplete rights (claims) existing at the cession.

Appellant, as the bill stated it would do, denied that appellees' title was derived from the United States and alleged their ancestor's title was complete before the cession, and therefore upon the settled construction of the Treaty was

exempt from the 8th article, as private property not ceded to the United States.

United States *v.* Mitchell, 9 Peters 711.

As stated in the brief on the motion to dismiss the real controversy between appellees and appellant was unto which class, incipient or perfect titles, the grant to Marcos belonged.

If as appellees' bill alleged and as the proof established, the title of their ancestor under Spain was but an inchoate right, needing the performance of conditions, either upon the part of the grantee or the Government of Spain (paragraph 1 of the bill, page 3 of record), by the settled law, that title was confirmed by the United States under their political obligation in conformity to the stipulation in the 8th article of the Treaty, and is derived from the United States, and evidenced by the patent issued in A. D. 1895, upon a survey approved June 18, A. D. 1894. The record, page 978.

What the Court Was Required to Decide.

The whole controversy turned upon a determination of whether or not appellees had correctly set out in their bill the character of their title.

Two Courts have decided that they did, and the record though so volumous, contains nothing to support the claims set up in appellant's answer that appellees' title was complete before the cession of the Floridas to the United States.

Appellees stating their own case assigned it to the class of incipient titles which required the performance of conditions under the sovereignty of Spain, before a complete title could issue. They alleged and proved that the title papers were in form but the first concession, needing to be consummated by a royal title before a right of property passed (the record, page 970), and that as to the lands patented the title was derived from the United States because no particu-

lar lands were granted by Spain, and there had never been a segregation of the lands granted from the Royal domain before the cession. (The record, pages 3, 115, 116, 1026, Exhibit 10.)

Appellees did not claim title under the Treaty—appellant could not derive any estate under it, because its claim of title was based upon the revenue law of Florida.

Whether the Lands Were Subject to Taxation the Real Controversy.

The controversy hinged on whether until the issuance of the patent from the United States the lands were private property subject to taxation.

Appellees alleged and proved the lands passed to the United States at the cession as part of the King's domain; appellant by its answer alleged, but failed to offer any evidence to show, that the lands were segregated from the Crown property before the cession, were private property and subject to the revenue laws of Florida when it became a state.

The Treaty was before the Court but as a fact in the history of the case.

Gill *v.* Oliver, 11 Howard, text 546-548, 13 L. ed. 807.

The determination into which category, incipient or complete titles, the grant to Marcos fell in no way involved the construction of the Treaty.

Muse *v.* Arlington Hotel Company, 168 U. S., text 437, 42 L. ed. 533.

Phillips *v.* Association, 124 U. S. 605-612.

Powder Works *v.* Davis, 151 U. S. 389-391.

If there was or is any occasion to depend upon the construction of the treaty, its construction is settled by the re-

peated decisions of this Court, and can not be made ground for assignment of error here.

State of Kansas *v.* Bradley, 26 Fed. Rep. 289, text 290.

McGilvra *v. Ross,* 215 U. S. 70, text 80, 54 L. ed. 95.

In the amended bill it was alleged and by the evidence established, that there never was any assessment upon which to base the tax sale made in A. D. 1852. (The record, pages 75, 155 to 192.)

In A. D. 1872, certain sections according to the public surveys were sold for taxes (page 30 of the record), but at this very time the State of Florida was holding about 1,500 acres of the patented lands under United States patents. The record, page 835.

The issue raised by the pleadings was determined upon general principles of law without the application of any Federal statute and was manifestly correct.

If these particular lands patented to appellees were held by their ancestor under a complete (or Royal) title and had been segregated from the King's domain as private property before the cession of the Floridas, they did not pass to the United States, and upon general principles of law, became subject to taxation under the laws of the State where situated. If, as appellees alleged in their bill and sustained by the proofs, the lands passed to the United States at the cession as part of the territories which belonged to the King, then by the same general principles of law, they were not taxable until after the patent issued in A. D. 1895.

An examination of the assignments of error discloses that upon the case made by the bill and answer the question into which class, incipient or complete titles, the grant to Marcos

belonged was the issue presented to the trial court for determination.

The 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st and 22nd assignments of error in the Circuit Court of Appeals are here renewed by the 1st, 17th, 18th, 19th, 20th, 22nd, 23rd, 24th and 25th assignments here. Pages 107, 108, 1046, 1047 of the record.

The Decree Manifestly Correct.

If the decree of the trial Court, upon appellees' statement of their case, necessarily depended upon any Federal statute so that this Court has jurisdiction yet it was manifestly correct.

That both the legal and equitable title to the lands did pass to the United States upon the facts alleged by appellees in their bill and proved by evidence is established by the adjudications of this Court.

United States *v.* Wiggins, 14 Peters, text 350, 10 L. ed. 489.

United States *v.* Forbes, 15 Peters, text 182-184, 10 L. ed. 704.

United States *v.* Buyck, 15 Peters, text 223, 10 L. ed. 718.

United States *v.* Miranda, 16 Peters, text 158, 10 L. ed. 922.

United States *v.* Lawton, 5 Howard 11, text 28, 12 L. ed. 35.

United States *v.* King, 3 Howard 733.

United States *v.* King, 7 Howard 833, text 847, 12 L. ed. 940.

McGuire *v.* Tyler, 8 Wall 650.

D'Autrive *v.* United States, 101 U. S., text 706, 25 L. ed. 871.

Mitchell *v.* Furman, 180 U. S. 402, 45 L. ed. 612.

In United States *v.* Forbes Mr. Justice Catron speaking for this Court, said:

> "All the public domain of Spain was ceded to this government by the treaty of cession, and the title in fee to the same vested in the United States. * * * The description * * * authorizes the grantee to take the land on the bank of this river * * * the land might have been located on either bank from its commencement as a river to its mouth at the ocean. No survey of the land granted was ever made; the duty imposed upon the grantee to produce the plot and demarcations in the proper time, was never performed. * * * the execution and return of the survey to the proper office in such case, could only sever the land granted from the public (royal) domain * * * no particular land having been severed from the public domain by John Forbes, his is the familiar case of one having a claim on a large section of country unlocated; in its nature and effect as regards the government, not differing from the holder of a land warrant in the American States * * * In such a case the government has ever been deemed to hold the fee, unaffected by a vested equitable interest, until the location was made according to the laws of the particular country."

In United States *v.* Miranda, 16 Peters, text 158, this Court said:

> "No survey was made under the grant whilst Florida belonged to Spain * * * is such a grant protected by the Treaty? We think not."

And on page 159:

> "In the case before us for want of a survey, or some point for the beginning of one, there can be no seizin in fact nor in law. No order of survey was made, nothing was done to withdraw the lands from the mass of property * * * The 8th article of the Treaty * * * imposes upon the United States no obligation to make title to lands of which the grantee had neither an actual seizin, nor a seizin in law."

The Complete Title Equitable and Legal Passed to the United States.

Upon the face of the title papers evidencing the title held by Marcos under Spain (the petition and concession, pages 115-116 of the record), it appears that there is no point for the beginning of a survey of the 5500 acres prayed for and conceded. The concession by Estrada, therefore, granted no particular lands for want of identity or ascertainable locality. The land patented in 1895 to appellees, therefore, was a part of the Royal domain at the cession, and not even the equitable title had passed out of the King.

That the Land Department so held is established by the survey of these lands as public lands. See Complainant's Exhibit 10, page 1026 of the record.

A survey under the land laws of the United States is presumptive proof that the lands are a part of the public domain.

Carpenter *v.* Runnels, 19 Wall. 138.

This Court will take judicial notice that the grant to Marcos as surveyed by the United States and patented does not conform to the locality described in the petition and concession made by Estrada. There is no Long Lake near this survey upon the map of Florida.

It will be observed that in her petition for the confirmation of the grant to Marcos the petitioner admits the land had never been surveyed. (The record, page 115.)

It has been the policy of Congress, not only in respect to the Florida claims but also in the Louisiana claims, to require in addition to the first concession, an official survey and formal grant made under the former sovereign, to invest the claimant with a title as against the United States.

De la Croix *v.* Chamberlain, 12 Wheat, text 599, 6 L. ed. 742.

United States *v.* Wiggins, 14 Peters, text 349.
United States *v.* Forbes, 15 Peters 173, 10 L. ed. 705.
United States *v.* Delespine, 15 Peters 355, 10 L. ed. 758.
United States *v.* Miranda, 16 Peters 153, 10 L. ed. 922.
United States *v.* Acosta, 1 How. 24, 11 L. ed. 23.
United States *v.* Lawton, 5 How. 10, 12 L. ed. 35.
United States *v.* King, 3 How. 773-787, 11 L. ed. 830.
Menard *v.* Massey, 8 How. 294, 12 L. ed. 1090.
Fremont *v.* United States, 17 How. 442, 15 L. ed. 245.
Maguire *v.* Tyler, 8 Wallace 650, 19 L. ed. 320.
D'Autrive *v.* United States, 101 U. S. 700, 25 L. ed. 871.

In the case in 3 Howard, text 786, this Court said:

> "The instruments themselves contain no lines or boundaries whereby any definite and specific parcel of land was reserved from the public domain; and it has been settled by repeated decisions in this court, and in cases too, where the instrument contained clear words of grant, that if the description was vague and indefinite, as in the case before us, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land, which could be maintained in a court of justice."

If appellees' ancestor had no right of property enforceable in Court they had no taxable estate or interest.

Appellant Failed to Prove Its Defense.

It is sufficient upon this motion to point out that appellant in the trial court offered no evidence to establish that the grant to Marcos was a complete title. It depended wholly upon a copy from the Commissioners' Report appended to the register of claims contained in their Report No. 3, printed in the record on page 969.

As to this copy attached to the Commissioner's report it is to be observed, and the printed volumes disclose, that the cases numbered from 21 to 26 are separated from the first 20 cases, and have a different title; that the column under "date of patent or royal title" is blank, as also under the columns headed "Dates of Survey," "By whom surveyed," "Occupation and cultivation."

However, beside what appears upon the face of this table printed in Vol. 3, p. 571, of Gale and Seaton's edition of the American State Papers and which is sufficient to show the cases are not of those founded on royal titles and not intended to be so reported, the following facts are found in that set of volumes, and in the reports of this Court:

On pages 697 to 709 of Volume 3 American State Papers these cases are numbered from one to six; No. 24 or 4d is not reported; Nos. 23 and 24, or 3c and 4d, is the same grant; Nos. 25 and 26, or 5c and 6f, is the same grant to Arrambede, which in the case of United States *v.* Delespine, 15 Peters, 319, this Court declared to be void; No. 21, the grant to Fish, this Court found in Mitchell *v.* Furman, 180 U. S. 402, to be a first concession, which became public lands of the United States by failure of the grantees to accept the confirmation made by the act of 1828.

The table attached to Report No. 3, appellant's Exhibit No. 30, is therefore no evidence that the Commissioners reported the grant to Marcos as founded on a royal title, or meant to include it with the 20 claims contained in report No. 3.

If they had so found or so reported the uncontested facts in this record established the grant to be an incipient title.

Beside the admitted fact that no survey had been made under Spain, which itself under the Spanish land laws is conclusive, the form of the title on its face is but the first concession.

See the Report of the Commissioners, page 970 of the record.

See the form of a Royal Title set out in United States *v.* Clarke, 8 Peters 436.

The law and practice are set out in

Menard *v.* Massey, 8 How. 294.

Fremont *v.* United States, 17 How. 442.

Doe *v.* Latimer, 2 Florida 71.

Mitchell *v.* Furman, 180 U. S. 402.

THE UNITED STATES PATENT THE SOURCE OF APPELLEES' TITLE.

That appellees' title was derived wholly from the patent issued by the United States as the bill alleged must be apparent from the foregoing argument.

In United States *v.* Wiggins, 14 Peters, text 350, 10 L. ed. 489, this Court said the Florida claims were confirmed in accordance with the act for confirmation of claims in Missouri, which required the issuance of a patent to the confirmee.

Therefore as to all grants on which the complete or Royal title had not issued under Spain, the patent from the United States transfers the fee, and where as in the concession to Marcos there had been no segregation of the land conceded under the sovereignty of Spain, and the inchoate claim was only to a certain quantity of land, unidentified, both the equitable and the legal title remained in the United States until the issuance of the patent.

From the foregoing statement of facts and law the decree of the Circuit Court of Appeals that "the lands in controversy were not segregated from the public domain, and the title thereto remained in the United States until the issuance of the patent, therefore they were not taxable by the

State of Florida at the several times they were listed for taxes and sold for non-payment thereof" is so manifestly correct, that if this court has jurisdiction it should be affirmed without argument.

PRACTICE WHEN FEDERAL QUESTION RIGHTLY DECIDED.

A comparison of the assignments of errors in this Court with the errors assigned in the Circuit of Appeals, pages 1041 to 1050, and pages 102 to 110 of the record, discloses that the assignments one, two and three in this Court are alone other than the assignments made in the Circuit Court of Appeals, and that assignments No. 6, 17 and 18 are the only assignments which present color of claim to a question which arises under the laws of the United States.

It was the purpose of the judiciary act, to submit for final determination to the Circuit Court of Appeals all cases which do not arise out of a controversy respecting the operation or effect of some Federal law, or Constitutional or Treaty question. It follows that in a cause not made final in the Circuit Court of Appeals because the jurisdiction of the District Court was invoked on the ground of diversity of citizenship and also on the ground that the suit involved a controversy between the parties as to a right which depends upon the construction or effect of some law of the United States, that when the Court finds that the Federal question in dispute has been rightly determined by the Circuit Court of Appeals, it will not re-examine the general questions of law determined by the Circuit Court of Appeals, unless it appears on the face of the record that a plain error of law was committed with respect thereto.

If it be held upon the motion to dismiss that this case is not of the character made final in the Circuit Court of Ap-

peals because appellant's contention is here sustained, that, the case made by appellees by their bill presented a Federal question for determination by the District Court, then this case belongs with that class of cases which may be re-heard here because of the mere accident that appellees derive title through an act of Congress.

Then in this case, as in cases based on the employers' liability act and the safety appliance law, while this court is required to consider and pass upon all questions for decision in the case, even though they may not concern the construction of the act of Congress, if such act be held to have been relied upon by appellees as the source of their title, yet this Court will leave all other than the Federal questions where the Circuit Court of Appeals left them, unless after an examination of the record there is formed a clear conviction that error was committed by the Circuit Court of Appeals.

Chicago Junction R. Co. *v.* King, 222 U. S. 222, 56 L. ed. 173.

Southern Ry. Co. *v.* Gadd, 233 U. S.—decided May 11th, 1914.

Texas & Pacific Ry. *v.* Howell, 224 U. S. 577, 56 L. ed. 894.

It was the intent of the Judiciary act to restrict litigants to one appeal upon the merits.

Robinson *v.* Caldwell, 165 U. S. 359, 41 L. ed. 745.

Ayers *v.* Polsdorfer, 187 U. S. 590, 47 L. ed. 316.

Loeb *v.* Trustees, 179 U. S. 472, 45 L. ed. 285.

Colorado Central etc. Co. *v.* Turk, 150 U. S. 138, L. ed. 1030.

Columbus Const. Co. *v.* Crane Co., 174 U. S. 602, 43 L. ed. 1103.

Roberts *v.* Cooper, 20 How., text 481, 15 L. ed. 969.

If the Case Be Re-Stated, the Decree Should Be Affirmed.

Even if we are wrong in our contention as to the duty of this Court to re-state this case, yet if this record be re-examined to discover whether inferences may not be drawn from the evidence to conflict with the conclusion of the two courts below, it will be found that the decree appealed from should be affirmed without argument.

The assignments of error, outside of those based upon the character of appellees' title under Spain, reduced to their substance present but four questions:

First: Whether appellant had acquired title to the lands described in the patent by adverse possession.

Second: Whether appellees are barred from suit by laches.

Third: Whether appellees had an adequate remedy at law.

Fourth: Whether appellees, or those named in the decree, are the legal representatives of the patentees and competent to sue.

If this Court shall take jurisdiction on this appeal we submit that these errors assigned are without merit.

Has Appellant Acquired Title to the Lands Patented to Appellees By Adverse Possession.

Section 1721 General Statutes, Section 1290 Revised Statutes of Florida prescribe the requisites of an adverse possession under color of title.

The statute reads as follows:

> "(1) Whenever it shall appear that the occupant or those under whom he claims entered into possession of premises under the (a) claim of title exclusive of any other right, founding such claim upon

a written instrument as being a conveyance of the premises in question, or upon the decree of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument decree or judgment for seven years, the premises so included shall be deemed to have been held adversely: except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract."

"(2) For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or judgment or decree, land shall be deemed to have been possessed and occupied in the following cases: 1st, Where it has been usually cultivated or improved; 2nd, Where it has been protected by a substantial inclosure; 3rd, Where (although not inclosed), it has been used for the suppuy of fuel, or of fencing timber for the purposes of husbandry, or for the ordinary use of the occupant; or 4th, Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated."

Section 1720 General Statutes, Section 1289 Revised Statutes of Florida, is as follows:

"In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action."

In the trial court and in the Circuit Court of Appeals the question of adverse possession was elaborately argued.

Under the rule which governs this Court in the examination and review of general questions of law upon appeal under Section 241 Judicial Code we deem it only necessary to point out the substance of the facts as to appellant's claim of title by adverse possession.

All that part of the voluminous record which deals with a possession of the lands patented, prior to the issuance of the patent in A. D. 1895, may be omitted from consideration because

First: Until the issuance of the patent the United States claimed the title and possession.

Second: Until the issuance of the patent the United States held the legal title and by the general principles of law, as also by Section 1720, General Statutes of Florida, were presumed to be in possession.

Third: Until the issuance of the patents the survey of the lands patented, made by Williams in A. D. 1851, was not a part of the official plats of Township 19, S. Range 28 East and Tp. 19, S. R. 29 E. (though such a survey approved by the Surveyor General June 20th A. D. 1851, was "loosely appended" to the official plats in the office of the Surveyor General of Florida) and the lands therein described had never been segregated from the public domain. The record, page 848, page 838, pages 286, 287, 339, 398, 399, 400, Ex. 10, page 1026.

Fourth: Until the deed from the Florida Land & Colonization Company to appellant, dated May 3, A. D. 1900—pages 32 and 868 of the record—there had been no "conveyance of the premises in question" upon which to base color of title.

Up to this deed recorded May 14th, 1900, every deed in the chain of titles under which appellant claims had been

only of that part of the land which lies in Township 19, South of Range 28, "divided into lots" according to the method prescibed by the land laws for lands surveyed as public lands of the United States, that is, by Sections of 604 acres each, numbered from one to thirty-six.

The Section numbering of private lands begins at number thirty-seven by the system of public surveys, and each section embraces all the land in a township of six miles on either side.

See deed from Partin Tax Collector to Powell. Record, page 869.

See deed from Powell to Sanford. Record, page 874.

See deed from Sanford to Florida Land & Colonization Co. Record, page 896.

The tax deed from Simpson, Sheriff, to John Starke, dated July 5, 1852, is an exception—pages 28 and 966 of the record—but this deed omits all that part of "the premises in question" located in Range 39, and is not the basis of any claim of adverse possession in appellant as appellant's claim of title begins with the tax sale by Partin, A. D. 1872, and is hostile to any claim under the tax deed to Starke in A. D. 1852.

By the express terms of the statute the possession of any one "lot" under the public surveys can not be extended beyond that "known lot."

A "known lot," according to the plats of the public surveys, is a quarter quarter section, or 40 acres.

Kendrick *v.* Latham, 251 Fla. 819.

It will be noted that appellant is without color of title to the lands patented—the Smith & Clifford lands in Section 9 being excepted in its deed—pages 32 and 33 of the record.

Fifth: The evidence in the record, search it through its wearisome repetitions as you may, fails to bring appellant

within the description prescribed by either one of the four clauses of the second subdivision of Section 1721, General Statutes of Florida, by which land may be deemed to have been possessed and occupied.

Sixth: All actual occupancy of the several "known lots" of the premises included in any of the deeds prior to the deed to appellant of May 3, 1900, ceased about the time of the "big freeze" in A. D. 1895.

The occupancy prior to A. D. 1895 appears to have been confined to about 8 acres in the 640 acres surveyed as section nine, and one acre in Section 16 of Township 19, Range 28 East. The record, pages 276, 236, 239, 240, 241, 242, 243, 244, 245, 254, 257, 263, 264, 265, 266, 267, 268, 271, 274, 277, 278, 279, 280, 283, 284, 286, 292, 297, 303, 306, 830, 311, 313, 323, 352, 360, 361, 367, 368, 371, 373, 374, 375, 411, 443, 444.

Seventh: Appellant never had any possession of the lands patented. The shack or cabin built by appellant at a cost of ten dollars and forty-three cents—page 437 of the record—was not located on the lands patented, but three chains and 78 links south of the lands patented. The record, pages 555, 561, 569, 570, 842.

Appellant built the cabin on fractional North East ¼ of the North East ¼ of Section 21, the lands patented to Z. C. Drawdy, hence appellant may not claim any benefit of whatever possession was had of lands in Sections nine and sixteen "before the big freeze" in A. D. 1895. The record, pages 861, 564, 566, 568, 556.

When during the trial appellant found it had not placed the cabin on the grant as surveyed and described in the patent, it sought to extend the lines of the grant to a distance nine chains and 57 links south of the north line of Section 21 (page 1030 of the record) instead of five chains 35 links as described in the patent (pages 839-842 of the record), thus attempting to

enlarge the area of appellees' lands beyond what they themselves claimed, namely 5486 46/100 acres.

Under claim of title by adverse possession of appellees' lands appellant may not extend the exterior boundary lines of "the premises in question" beyond the true location as claimed by appellees, and by occupancy of lands not claimed by appellees establish a constructive possession of unoccupied lands held by appellees by a legal title. "The premises in question" referred to in the statute are the premises to which the person establishing the legal title claims ownership.

It would be a strange doctrine that would authorize the defendant in ejectment to force onto plaintiff the legal title to lands plaintiff did not claim, to make out a constructive adverse possession to lands plaintiff did claim.

It is therefore unnecessary to review the mass of testimony in the record as to the true location of the south line of the grant as patented.

A patent from the United States upon confirmation of a private claim * * * must be taken as correct until vacated, not only as to the validity of the claim, but as to the boundaries established.

Knight *v.* U. Land Ass., 142 U. S. 14, 39 L. ed. 989.

Eighth: Appellant claimed title under the State of Florida, but the State was estopped to set up an adverse possession against the United States to the lands patented having taken title thereto from the United States. Record, pages 835-836.

The decree of the Circuit Court of Appeals was without error as to appellant's contentions presented by those assignments of error covering the claim of title in appellant by adverse possession, and this is so manifest that it is unnecessary to review or argue the evidence in the record.

WERE APPELLEES BARRED THEIR ACTION BY LACHES.

The District Court and the Circuit Court of Appeals as a matter of law have held appellees' contention well founded, that until A. D. 1895 when the patent issued appellees were prevented by the claim of title by the United States from bringing any action.

Promptly on the issuance of their patent, their counsel, Mr. J. H. G. Martin, in their name, made entry upon the "premises in question" which he found to be vacant wild lands, about two-thirds or three-fourths uninhabitable swamp. The record, pages 827, 830, 544, 545, 551, 397, 373, 375, 374, 368.

Appellant entered into negotiations with appellees' counsel for the purchase of the grant or a portion of it in A. D. 1896, and continued these negotiations until certainly February A. D. 1898. Pages 833 and 834 of the record.

Some action appears to have been prosecuted by appellees against the Florida Land and Colonization Company, grantor of appellant, in the Circuit Court of Lake County, Florida, in A. D. 1891, even before the issuance of the patent. The record, page 259.

No hostile title appears to have been asserted by anyone after the patent issued until appellant recorded its deed May 14th, A. D. 1900.

A suit in equity filed in the District Court by appellees against appellant appears to have been at issue by September 7th, 1903. Pages 1031-1032 of the record. This suit was dismissed without prejudice April 4th, A. D. 1904. Page 1034 of the record. The present suit was filed May 1st, 1907.

If the action had been at law it was brought within the time prescribed by statute.

The circumstances of this case do not justify a Court of Equity in declaring that a shorter time than the statute prescribes for recovery of land be enforced against appellees.

whose situation was unusual, being numerous and scattered in a foreign country.

Laches is delay which works disadvantage to another by reason of a change in conditions or relation of the parties. When this defense is sustained Courts proceed on the assumption that the party to whom laches is imputed has ample opportunity to establish his rights in the proper forum; that by reason of this delay the adverse party has good reason to believe the alleged rights are worthless or have been abandoned.

Townsend *v.* Vandermerker, 160 U. S. 171, text 186.
Gallinger *v.* Caldwell, 145 U. S. 368, text 372, 26 L. ed. 740.
So. Pacific Ry. Co. *v.* Stanley, 49 Fed. 263, text 266.

The owner of the legal title in possession may lie by until his possession is invaded or his title is attacked before he is required to take steps to vindicate his rights.

Simons Creek Coal Co. *v.* Doran, 142 U. S. 417, text 449.
Reorganized Church *v.* Church of Christ, 60 Fed. 937, text 956.
Orthwein *v.* Thomas, 11 Am. State Reports 159, text 169.

Lapse of time forms no bar to a bill to remove a cloud on title brought by one having legal possession.

Sharon *v.* Tucker, 144 U. S. 533.
Mener *v.* Beekman, 50 N. Y. 337, text 343.
Schoener *v.* Lessaier, 107 N. Y. 111.
Thompson *v.* Damas, 85 Fed. 517, text 522.
Dees *v.* Smith, 55 Fla., text 656.

Appellees are not estopped from asserting the invalidity

of the tax deeds under which appellant claims. Their patent does not enure to appellant's benefit.

Bronson *v.* Kukuk, 3 Dill. 490, Federal cases 1929.

Appellant had full knowledge of appellees' claim of ownership before it acquired its deed.

An equitabe estoppel may not be set up by one having full knowledge of another's rights.

Bigelow on Estoppel, p. 467-470.
Story Eq. Jur. Section 1543.

Appellant in the trial Court and in the Circuit Court of Appeals strenuously insisted that appellees were barred by equitable estoppel and by laches.

The basis of the argument was that when the Secretary of the Interior reversed the holding of the land department and held that a league square was approximately 6,000 acres, that by the doctrine of relation the ancestor of appellees must be deemed to have had a complete title as of the 23rd of May, 1828.

The answer to this contention is contained in the decision of this Court in the case of Gibson *vs.* Choteau, 13 Wall. 92, text 101, 20 L. ed. 537.

This Court there, speaking by Mr. Justice Field, said the doctrine of relation is only applied for the security and protection of persons who stand in some privity with the party that initiated proceedings for the land and that acquired the equitable claim or right to the title.

See the same principle announced in Hussman *v.* Durham, 165 U. S. 144, text 148, 41 L. ed. 666.

The same principle which forbids state legislation interfering with the disposal of public land also forbids legislation depriving the grantees of the United States of the

possession of property granted by the United States where the right of possession is withheld by reason of any delay in the transfer of the title after the initiation of the proceedings for its acquisition, because the consummation of the title rests entirely with the Government and is not a matter which the grantees can control; mere occupation of the lands to which the United States claimed title for the period prescribed by the Statute of limitations cannot be held to constitute an equity in favor of the possessor.

A further answer is that as alleged in the bill Appellees' Ancestor had at best only an equitable claim to an undefined tract of land out of the Public Domain, ceded to the United States and until the patent issued, both the legal and equitable title remained in the Government, and while so remaining the concession from Spain was in process of administration; the Land Department had jurisdiction, and the title in the United States was not lost.

Michigan Land & Lumber Co. *vs.* Rust, 168 U. S., text 592-593.

Slidell *v.* Granjeau, 111 U. S. 412, 28 L. ed. 330.

Hussman *v.* Durham, 165 U. S. 144, text 147.

By Section 7 of the Act of Feb. 8, 1827, for the confirmation of Florida land titles the confirmed grants were to be surveyed by the United States, and by Section 8 patents were to be granted "in like manner as is provided by law for the other Public Lands of the United States." 4 Stats. page 202.

By the Act of Jan. 23, 1832, 4 Stats. 496, patents are issued to the heirs and legal representatives of the confirmee.

Michigan Land & Lumber Co. *v.* Rust, 168 U. S. 589, text 593.

Until May, 1895, the State of Florida held patents from

the United States to part of appellees' lands, pages 835-837 of the record.

It is apparent that appellees were powerless to proceed in the courts against claimants of their lands while their claim of title was being administered by the Land Department of the United States.

This was so held by both the courts which have passed upon this case, upon general principles of law, and is so manifestly correct as not to need argument.

Further the doctrine of relation is a common law doctrine, and the decree of the Circuit Court of Appeals as to the proofs and the general principles of law thereon ought not to be reviewed, until it is made clearly to appear that some material error was committed by that Court in respect to a Federal question in issue between the parties.

Was Appellees' Remedy at Law.

It is unnecessary to argue the general jurisdiction of equity to entertain a bill for removal of cloud on title.

Section 1950, General Statutes of Florida, authorizes a bill in equity by any person whether in possession or not against any person not in actual possession to remove cloud on title. That the adverse claim is void on its face is no bar to jurisdiction.

Section 1950, General Statutes of Florida, is as follows:

> "A bill in equity may be brought and prosecuted to a final decree by any person or corporation whether in actual possession or not, claiming title legal or equitable, to real estate, against any person or corporation not in actual possession, who claims an adverse estate or interest, legal or equitable therein, for the purpose of determining such estate or interest and quieting or removing clouds from the title to such real estate. It shall be no bar to the granting of relief

> to the complainant in such cases that the title has not been litigated at law, or that there may be only one litigant on each side of the controversy, or that the adverse claim, estate or interest against which such bill is brought is void on its face, or though not void on its face requires evidence extrinsic of itself, to establish its validity."

The bill alleges, and the proof established, that the lands are wild, uncultivated, unenclosed, unimproved, covered with a growth of timber and not, nor ever since the issuance of the patent, in any part occupied.

In such cases a Bill in Equity is the proper proceeding.

> Graham *v.* Mortgage Company, 33 Fla. 356, 14 So. Rep. 796.

It is therefore manifest that the claim that appellees had a remedy at law, was properly rejected by both the courts below.

Appellees Are the Proper Parties to Sue.

The answer neither admitted nor denied that appellees are the heirs at law of Miguel Marcos and Teresa Rodriguez but demanded strict proof thereof.

As the rule existed when this suit was brought an essential allegation in the bill neither admitted nor denied by the answer generally needed to be established by proof. There is, however, another rule of equity pleading, that an answer must be read in its entirety.

The answer here while demanding proof that appellees were the heirs at law of Marcos goes on to admit title to the land to have been in Marcos and that it was confirmed to Teresa Rodriguez and her children (page 35 of the record), and as an affirmative defense sets up that that title has passed to appellant by virtue of the tax sale under the laws of the State of Florida. This title in appellant has

broken down on the trial and therefore the allegations of the bill that appellees are the children and descendants of the children of Marcos and Teresa Rodriguez does not require strict proof.

Not having either title or possession of the lands the subject matter of the suit, appellant may not contest appellees' right to sue on account thereof, because as to appellant it is immaterial who by the rules of descent may be the legal representatives of Teresa Rodriguez entitled to take title under the patent from the United States.

In the case at bar the United States have recognized appellees as entitled to delivery of the patent for the lands granted to Marcos and confirmed to Teresa Rodriguez, and appellant has been found to have neither a right of ownership nor a right of possession therein. Hence it may not contest the right of these appellees to have the record title cleared. Its record title is worthless. It can not concern it who wipes it off the record, so long as it be not a mere intruder.

If appellant had any standing to contest appellees' right to bring this action, now that the case has been brought to this court (if it has jurisdiction therein), this Court may judicially notice the records of the Land Department of the Government. Those records show that appellees have been recognized by the United States as the legal representatives of Teresa Rodriguez, and so far as this appellant is concerned no other evidence of that fact was required, to give them a standing in court.

Both the District and the Circuit Court of Appeals have held that appellees made due proof of their right to sue.

It will be found in the record, pages 488 to 525, 984, 1024, p. 196, 216, p. 1036, 1037 that apart from the proof of pedegree made by the witness Sariol (pages 119-154 of the

record), appellees made strict proof of descent from each of the three children of Marcos into one or more of the several persons found by the decree to be heirs at law of Teresa Rodriguez.

Appellant made cumulative proof of identity of the parties in this suit with the parties who sued this defendant in A. D. 1903, by the same counsel who were recognized in the Land Department to procure the patent as representing the legal representatives of Teresa Rodriguez. Record, pages 1032-1034-844-847.

In A. D. 1896 and A. D. 1898 appellant recognized the rights of the attorneys of record of the same parties who prosecuted the former suit to represent the owners of the lands. Pages 833-834 of the record.

This Court is not called on to scrutinize the record to discover whether it may not be possible to draw therefrom inferences which might conflict with the conclusion of the courts below as to the tendency of the proof upon this point.

Having been recognized by the owner of the legal title as the descendants and heirs at law of Teresa Rodriguez appellees were not required to make further proof of their right to sue to remove a cloud upon the patent granted and delivered to them by the United States, though as shown by the record they did make strict proof of the pedigree of the several persons, eight in number, named in the decree, from the common ancestors, Teresa Rodriguez and Miguel Marcos, by birth, marriage and death certificates taken from church records and duly proved by examined copies, or by the original records produced.

Although appellant was not in position to require appellees to make strict proof of their right to sue, yet as a measure of safety it was done at great expense and trouble, and a large part of appellees' testimony found in the record is in

proof of the pedigree of the eight persons named in the decree, one or more from each of the three branches of the family of Marcos.

That those persons named in the decree had the right to sue for all cannot be controverted.

Scott *v.* McDonald, 165 U. S. 107, text 116.

Appellees had a common interest to be prosecuted for a common benefit. Appellant has no estate nor interest in the lands, the subject matter of the suit.

The Court will permit the other parties to come in under the decree and take the benefit of it, if it be that there are any other parties.

West *v.* Randall, 2 Mason 181, Fed. Cases 17424, page 772, citing Cooper's Eq. Pl. 39, 2 Madd. 144-146, 16 Ves. 321.

Wood *v.* Dummer, 3 Mason, 317, Federal Cases 17944.

Campbell *v.* Railroad Co. 1 Woods 368, Federal Cases 2366.

Appellant is in no way injured by the absence of an interested party, nor because only eight of the legal representatives of the patentee were proved and decreed to be such. One of the tenants in common might have maintained the suit.

Union etc. Co. *v.* Daugberg, 81 Fed. 73, text 90.

Bacon *v.* Robertson, 18 How. 480, text 489.

Payne *v.* Hook, 7 Wall. 421, text 431-432.

It is so manifest that the questions on which the decision of the Circuit Court of Appeals depended were all embraced in its determination that title to the lands remained in the United States until the issuance of the patent, and so ap-

parent on the face of the record sent up that its decree is correct, that argument of the numerous assignments of error filed herein is unnecessary.

If this Court has jurisdiction the decree appealed from should be affirmed.

WILLIAM W. DEWHURST,
JOSEPH H. JONES
JOHN C. JONES
Solicitors for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 135

WILSON CYPRESS COMPANY,
Appellant,

against

ENRIQUE DEL POZO Y MARCOS *et al.*,
Appellees.

Motion to Dismiss for Want of Jurisdiction and Brief in Support of Motion.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors and Counsel for Appellant.

J. B. LYON COMPANY, PRINTERS, ALBANY, N. Y.

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Supreme Court of the United States.

October Term, A. D. 1913.

WILSON CYPRESS COMPANY, a Corporation,

Appellant,

against

ENRIQUE DEL POZO Y MARCOS, LADISLAO DEL POZO Y MARCOS, ROSA DEL POZO Y MARCOS, CRISTINA DEL POZO Y MARCOS, by her Husband, ALEJANDRO NUNEZ VILLAVICENCIO Y ALVAREZ, Her Next Friend, MARIA PILER MARCOS Y POZO, by Her Husband, YSIDRO MARTIN MARTINEZ Y SANCHEZ, Her Next Friend, FELIX GENARO MARCOS Y DIAZ, ADELIDA GARCIA Y PECHARDO, Widow of URBANA CODINA, ESTEBAN GARCIA Y PECHARDO, LORENZO GARCIA Y PECHARDO, CARMEN GARCIA Y PECHARDO, by YSIDRO ZERTUCHA, Her Husband, and Next Friend, RAFAELA GARCIA Y PECHARDO, by MAXIMO ZERTUCHA, Her Husband and Next Friend, LUIS GARCIA Y PECHARDO, FAUSTO GARCIA Y PECHARDO, LUIS GARCIA ALVASSES, Otherwise Called ALVAREZ, AL-

No. 1030.
October Term, 1912.

FONSO GARCIA Y PECHARDO, RICARDO GARCIA ALVASSES, MARGARITA ALVASSES DE GARCIA, Widow, RICARDO ALVASSES GARCIA, ALFONSO ALVASSES GARCIA, MIGUEL ALVASSES GARCIA, LUIS ALVASSES GARCIA, MARIA TERESA GARCIA Y OCHANDARINA, GERTRUDES GARCIA Y OCHANDARINA, RICARDO GARCIA Y OCHANDARINA, JUAN BATISTA DIAZ GARCIA Y HERNANDEZ, RAFAEL DIAZ GARCIA Y HERNANDEZ, FLORA DIAZ GARCIA Y HERNANDEZ, AMELIA POZO Y NUNEZ, by SALADRIGOS, Her Husband and Next Friend, ALFREDO POZO Y NUNEZ, ERNESTO POZO Y NUNEZ, ROSA POZO Y FABRE, RIGLA POZO Y FABRE, CONCEPCION POZO Y FABRE, by ——— REYES, Her Husband and Next Friend,

Appellees.

The appellees in the above stated cause, by their counsel, move this court to dismiss the appeal from the decree of the United States Circuit Court of Appeals for the Fifth Circuit, taken and allowed in the above stated cause upon the ground that this court is without jurisdiction to hear and determine said appeal.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors and Counsel for Appellees.

Supreme Court of the United States.

October Term, A. D. 1913.

WILSON CYPRESS COMPANY, a Corporation, *Appellant*, *against* ENRIQUE DEL POZO Y MARCOS, LADISLAO DEL POZO Y MARCOS, ROSA DEL POZO Y MARCOS, CRISTINA DEL POZO Y MARCOS, by her Husband, ALEJANDRO NUNEZ VILLAVICENCIO Y ALVAREZ, Her Next Friend, MARIA PILER MARCOS Y POZO, by Her Husband, YSIDRO MARTIN MARTINEZ Y SANCHEZ, Her Next Friend, FELIX GENARO MARCOS Y DIAZ, ADELIDA GARCIA Y PECHARDO, Widow of URBANA CODINA, ESTEBAN GARCIA Y PECHARDO, LORENZO GARCIA Y PECHARDO, CARMEN GARCIA Y PECHARDO, by YSIDRO ZERTUCHA, Her Husband, and Next Friend, RAFAELA GARCIA Y PECHARDO, by MAXIMO ZERTUCHA, Her Husband and Next Friend, LUIS GARCIA Y PECHARDO, FAUSTO GARCIA Y PECHARDO, LUIS GARCIA ALVASSES, Otherwise Called ALVAREZ, ALFONSO GARCIA Y PECHARDO, RICARDO GARCIA ALVASSES, MARGARITA ALVASSES DE GARCIA, Widow,	**No 1030. October Term, 1912.**

RICARDO ALVASSES GARCIA, ALFONSO ALVASSES GARCIA, MIGUEL ALVASSES GARCIA, LUIS ALVASSES GARCIA, MARIA TERESA GARCIA Y OCHANDARINA, GERTRUDES GARCIA Y OCHANDARINA, RICARDO GARCIA Y OCHANDARINA, JUAN BATISTA DIAZ GARCIA Y HERNANDEZ, RAFAEL DIAZ GARCIA Y HERNANDEZ, FLORA DIAZ GARCIA Y HERNANDEZ, AMELIA POZO Y NUNEZ, by SALADRIGOS, Her Husband and Next Friend, ALFREDO POZO Y NUNEZ, ERNESTO POZO Y NUNEZ, ROSA POZO Y FABRE, RIGLA POZO Y FABRE, CONCEPCION POZO Y FABRE, by ——— REYES, Her Husband and Next Friend,

Appellees.

SIRS.— Please take notice that appellees in the above entitled cause on the 20th day of October, A. D. 1913, at 12 o'clock noon, or as soon thereafter as counsel can be heard, at the Supreme Court room in the City of Washington, in the District of Columbia, will move this court on the record herein, to dismiss the appeal taken and allowed in the above stated cause from the decree of the United States Circuit Court of Appeals for the Fifth Circuit, upon the ground that the Supreme Court of the United States is without jurisdiction to hear and determine said appeal.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors and Counsel for Appellees.

To Messrs.
JOHN C. COOPER, Jacksonville, Florida,
E. E. HASKELL, Palatka, Florida,
Solicitors and Counsel for Appellant.

I hereby accept service of the foregoing motion and notice for submission thereof on Monday, the 20th day of October, A. D. 1913, and also a copy of the brief of counsel for appellees in support of said motion.

Dated, JACKSONVILLE, FLORIDA, *September* —, A. D. 1913.

.....,
.....,
Solicitor and Counsel for Appellant.

Brief on Behalf of Appellees.

This case is brought up by appeal to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit, which affirmed a decree rendered by the District Court of the United States for the Southern District of Florida.

Appellant was defendant in the District Court and the appellant in the Circuit Court of Appeals.

The bill of complaint and the amendment thereto appear at pages 1 to 30 and pages 74 to 79 of the record; the defendant's answer at pages 35 to 66, and its amended answer at pages 80 to 87 of the record.

The question presented by the motion to dismiss this appeal is whether the bill of complaint filed by appellees in the District Court invoked the jurisdiction of that court upon any other ground than that they were aliens and the defendant was a citizen of the United States and of the State of Florida.

If the sole ground upon which appellees invoked the jurisdiction of the District Court was their alienage, the decree appealed from was final, and the motion to dismiss will be granted.

STATEMENT OF FACTS.

The bill printed on pages 1–27 of the record was filed in the then Circuit Court by Enrique del Pozo y Marcos and thirty-two other named

complainants, all aliens, on behalf of themselves and all others having any estate in the land, the subject-matter of the suit, who might be competent to sue in the Federal court against the appellant, a citizen of the State of Florida (Pages 1 and 2 of the record).

Their cause of action is stated in the bill of complaint as follows:

Complainants alleged they are the heirs-at-law of Miguel Marcos and Teresa Rodriguez, his wife; that in 1815 there was granted to Marcos by the King of Spain 5,500 acres of land in Florida, which was afterwards confirmed by the United States to the extent of a league square; that under the laws of Spain said grant was an inchoate right, called a first title, or a permit to occupy the land, and after proof of occupancy to secure a complete title; that before the complete title issued to the grantee, Spain ceded Florida to the United States, which, by the treaty, occupied the position of Spain with regard to this grant, and pledged themselves to confirm the grantee's title thereto; that said lands were not surveyed nor segregated from the King's domain during Spanish sovereignty, and were never in the actual occupancy of the grantee, and the title thereto passed to the United States, subject to the equitable claim of complainants' ancestors (record, pages 2, 3); the pedigree of the several complainants is traced from the common ancestors, Miguel Marcos and Teresa Rodriguez, but it is alleged that from inherent difficulties this statement was probably inaccurate, and leave prayed to make new parties if required (record, page 6). Complainants allege they are owners in fee of

the tract of land described in the patent which was issued to them June 26, 1895, by the United States; that the value of the land is above $2,000; that the lands are wild and never in actual occupancy (record, page 6); that after the cession of the Floridas to the United States, the Board of Land Commissioners reported this grant to Congress as valid, and recommended it for confirmation; that it was confirmed to the extent of a league square by the act of May 23, 1828, such league square to be located within the limits of the original claim; that complainants ancestors accepted such confirmation (record, page 7); that at the time said claim was confirmed and for many years thereafter a league square was held by the judicial and executive branches of the government to be 4,438 68/100 acres; that the United States by law were required to segregate from the public domain the private lands, by survey and file the surveys in the local land office; that by statute it was unlawful to make settlement upon lands ceded to the United States, the claims to which this government had refused to recognize and confirm; that complainants' ancestors and their descendants had never been within the State of Florida since the confirmation of said claim (record, pages 7, 8); that neither the confirmees nor the United States ever segregated by survey the league square confirmed as aforesaid, but the United States did survey all the lands embraced in the grant to Marcos as public lands, and such survey was approved May 15, 1848; a copy of the township plat of such survey was made part of the bill and appears at page 1026 of the record; that on February 12, 1894, the lands granted to

Marcos were declared by the Land Department to be a private grant, confirmed to Teresa Rodriguez, and that Department on that date ordered that they be patented, and on June 26, 1895, they were patented as Section 37 of Township 19, S. R. 28, and Section 41, Township 19, S. R. 29, according to the plats of the public surveys, aggregating 5,486 acres (record, pages 8, 9); that between A. D. 1831 and A. D. 1894, the Land Department of the United States held and treated the lands so patented as public lands of the United States, refused to recognize the title of complainants and their ancestors thereto, and excluded them from possession thereof; that during that period the United States had the legal title to said lands and the possession and right of possession thereof under claim of ownership as public lands (record, page 9); that in A. D. 1852, while the United States so claimed ownership thereof, the tax collector of Orange county, Florida, attempted to make a tax sale under the laws of the State of Florida of the lands patented, as aforesaid, for unpaid taxes alleged to have been assessed thereon as belonging to Teresa Rodriguez, for the years 1845 to 1851, inclusive (record, pages 9–10); that in A. D. 1872 the tax collector of Orange county, Florida, executed a tax deed to a large part of said land, describing the same according to designations used for the public lands of the United States, while they were still an unsegregated part of the public domain and while the United States claimed absolute ownership of said lands, for nonpayment of taxes recited in said tax deed to have been assessed thereon for the years 1867 to 1869, inclusive, in the name of John Starke, owner (rec-

ord, pages 11, 12); that under this second tax deed there was some occupancy of one section of the lands included in the patent according to the survey thereof as public lands, but none of the other of the sections into which said land had been surveyed by the United States as public lands had had any occupancy, and that during such occupancy of this one section, under said tax deed, the United States held and claimed as public lands the section so occupied, and the other sections, according to the public survey thereof (record, pages 14, 15); that during the period the United States were claiming the land as part of the public domain, various deeds of conveyance thereof were made by parties claiming under the tax deed issued in A. D. 1872, until in May, 1900, a deed to all but a small part of the tract was made to the defendant, Wilson Cypress Company (record, page 17); that defendant thereafter performed certain acts looking to acquiring a possessory title to complainants' lands, but had never been and was not when the bill was filed in actual possession thereof (record, page 18); that complainants were free from laches; that the grant to Marcos was not segregated from the public lands until June 18, 1894 (record, page 18); that in A. D. 1872 the United States patented to the State of Florida, under the Swamp Land Act, more than 1,500 acres of the lands described in the patent issued to complainants, which the State of Florida reconveyed to the United States after the Land Department had directed a patent therefor to issue to complainants, the lands being designated in such patent to the State and its conveyance back to the United States according to the descriptions used to designate public lands;

that upon its issue complainants promptly recorded their patent in the public records, sent an agent to Florida and took such possession of their lands as wild lands were capable of, and soon after the issuance of said patent, brought suit against the defendant, which suit was dismissed without prejudice and this suit thereafter instituted (record, pages 19, 20).

The bill alleges that all the tax deeds and the attempted conveyances thereunder are void for the reasons recited, but cast a cloud upon complainants' title (record, page 20). The bill then states as anticipated defenses that defendant will plead that title to the lands patented passed to Marcos by the grant itself, and that no patent from the United States was necessary, but states the contrary is the fact; that the United States did not relinquish its title or possession of the lands until the issuance of the patent, June 26, 1895; that before the approval of the survey of the lands as a private claim, on June 18, 1894, the claim of complainants attached to no particular land (record, pages 20, 21); that all acts of possession prior to the issuance of the patent were mere trespasses against the title of the United States; that no hostile occupancy of their said lands has been had since complainants took actual possession thereof under their patent, soon after its issuance (record, pages 21, 22); that the defendant company has no other claim or title to complainants' lands than that derived from the tax deed issued in 1872; there has never been any adverse possession thereof as against complainants, and could never have been, because posses-

sion thereof was at all times in the United States, and the State of Florida claiming under them, both sovereign States (record, pages 22, 23).

The bill prayed an injunction to restrain the defendant company from taking possession of the lands patented to complainants and from conveying or incumbering the same; that the tax deeds hereinbefore referred to, and also certain deeds thereunder be cancelled of record (record, pages 24, 26, 27).

By leave of the court the bill was amended to allege what was discovered after answer; namely, that there never had been any assessment of taxes on the lands patented, for the nonpayment of which the tax deed issued in A. D. 1852 (record, page 75); that certain tax certificates other than alleged in the bill had been issued from time to time before the patent issued, and were all void because issued while the United States claimed ownership of the lands (record, pages 76, 77). Paragraph 31 of the bill was restated to avoid any admission that the defendant company had built a cabin on the lands described in the patent, it having been found that the cabin was not on complainants' lands (record, page 78), and the last clause of paragraph 37 of the bill was slightly varied in its form (record, pages 78, 79).

The assignments of error on this appeal are printed on pages 1041 to 1050 of the record.

As they do not point out any ground of jurisdiction in the District Court or in this court, they are omitted from this brief.

ARGUMENT.

Jurisdiction Invoked Solely Because of Alienage.

The complainants' (appellees) statement in their bill of their cause of action, as above set forth, which is confirmed by the record, is conclusive that they invoked the authority of the then Circuit, now District Court alone upon the ground they were aliens, and the defendant (appellant) was a citizen of the State of Florida.

This is doubly apparent on the face of the bill.

First: Because their statement of their cause of action contains no claim or demand against defendant arising under the Constitution or laws of the United States, or treaty made under their authority, nor any of the grounds upon which jurisdiction of a Federal Court of first instance might be invoked under the Act of August 13, 1888, chap. 866, 25 Stats. at L., page 433, the law then in force, save the alienage of complainants and defendant's citizenship.

Second: By their bill, complainants expressly and in terms limited the parties complainant to those competent to sue in the Federal Court.

It is apparent the pleader understood that appellees' cause of action against the defendant did not arise under any law of the United States nor under any treaty.

The controversy between the parties to the suit was as to the effect upon the title and estate held by appellees in a tract of land situated in the State of Florida of certain revenue statutes and the statute of limitations of that State. The construction of those laws was in no way involved either under State or Federal statutes, but only their application.

Appellees denied that the State revenue laws had any application, because the title to their lands remained in the United States until the issuance of their patent, and alleged that appellant would contend the State revenue laws did apply to the estate by which appellees held the lands, and consequently the State statute of limitations and the doctrine of laches also applied, because it would contend that the United States never had any title to the lands described in the patent, and no patent from the United States was necessary.

The statements of the bill clearly show the pleader realized that the issue between the parties depended wholly upon the nature of the title to the lands granted by a foreign government.

If the title granted appellees' ancestor by Spain in A. D. 1815 was a complete or Royal Title, then under the foreign laws in force before the cession of the Floridas, the lands would necessarily have been segregated from the King's domain, and been private property before the cession and would have been subject to the revenue laws of the State of Florida from A. D. 1845, after confirmation by the United States.

If the grant to Marcos belonged to that large class which embraced all inchoate grants or incipient titles, and was never segregated from the Royal domain during the sovereignty of Spain, then the title in fee passed to the United States, and the lands were not taxable by the State of Florida until the United States relinquished their title and the land became segregated from the public domain by an approved survey.

United States v. King, 7 Howard, text p. 847.

United States v. Lawton, 5 Howard, text pp. 28–29.

Buyck v. United States, 15 Peters, text p. 223.

United States v. Wiggins, 14 Peters, text p. 350.

United States v. Forbes, 15 Peters, text pp. 182–184.

D'Autrive v. United States, 101 U. S. 700–706.

Appellees expressly stated in their bill of complaint in the trial court that they got no title to their land from Spain, that the lands described in their patent had never been segregated from the Royal domain before Spain ceded the Floridas, and that their concession was without definite location until the United States segregated from the public domain the particular lands described in their patent.

They expressly alleged that the title thereto passed to the United States at the cession (paragraph 1 of the bill of complaint, page 3 of

the record), and further expressly admitted that their ancestors failed to comply with the conditions imposed by law to make their inchoate title from Spain valid without a patent from the United States (paragraph 14 of the bill, page 7 of the record); and further admitted that prior to the issuance of their patent, the United States held both the legal title and the possession of the lands, concerning which this controversy existed (paragraph 17 of the bill, page 9 of the record).

The substance of the bill of complaint is that the tax sales and tax deeds made under the laws of the State of Florida before the issuance of the patent were void, because the lands had never been segregated from the King's domain before the cession, and passed to and belonged to the United States, complainants having only an equitable claim thereon, which did not ripen into a legal title until the issuance of the patent in A. D. 1895 (paragraph 1 of the bill, page 3 of the record).

Complainants did further aver that the United States never surveyed the lands confirmed to their ancestors because the lands confirmed had no such distinctive call as would admit of a survey (paragraph 16 of the bill, page 8 of the record), and also that the lands patented to them were not segregated from the public domain of the United States until June 18, 1894.

Controversy Between the Parties.

The real controversy between appellees and appellant in the trial court was as to the application of the revenue laws of the State of Florida upon the title evidenced by the patent from the United States to appellees.

The pleader set out the source and history of appellees' title in the statement of facts and makes reference to the laws of both Spain and the United States in its narration, but this statement is made for the sole purpose of enabling the trial court the better to determine the single issue of law; was or was not the land subject to State taxation in A. D. 1852 and A. D. 1872, before its survey as a private claim had been approved and made an official record, and before the United States quitclaimed its estate therein and title thereto.

Upon this motion to dismiss, this court can only inquire whether appellees relied upon any laws of the United States so that in their statement they alleged such facts in legal and logical form as show the suit did arise under the laws of the United States, and that the controversy between them and appellant really and substantially involved a dispute as to the effect of those laws.

It is clear that appellees in their bill did not set up any rights derived from those laws, any more than if they had claimed under the pre-emption or homestead or mining laws. As do the holders of lands patented under those laws they set up that they had acquired a part of the public domain of the United States, evidenced by their patent, seg-

regated from the other lands of the United States by a survey effective June 18, 1894.

Though the question may not be examined on this motion it is equally clear the defendant in the trial court set up no right or claim under a treaty or the laws of the United States, but simply put in issue the allegations of appellees' bill as to the source of their title, and as affirmative matter intended to make the State revenue laws applicable, averred that appellees' title was complete and perfect before the cession of the Floridas to the United States.

The Bill Expressly Limits Parties Complainant.

On the face of the Bill of Complaint it further appears that the jurisdiction of the District (then Circuit) Court was invoked solely because appellees (complainants in the trial court) were aliens.

The bill in terms expressly limited the parties complainant to those competent to sue in the Federal Court (the record, page 2).

In the introductory part of the bill, the ground on which jurisdiction was invoked is the recital that complainants are all aliens, residents and citizens of the Republic of Cuba, and that the defendant is a citizen of the State of Florida, in conformity to clause 6 of section 1 of the Act of

August 13, 1888. The bill then expressly limits the complainants to the named parties all aliens, and such other parties in interest as may be competent to sue in the Federal Court (the record, pages 1 and 2).

Had there been any other ground of Federal jurisdiction in the case, or had complainants in their bill invoked any ground of Federal jurisdiction other than their alienage "all others in like situation" would have been competent to sue in the Federal Court, without any reference to alienage or citizenship, and the bill would not have, as it expressly does, restricted by its statement the parties thereto to "all others in like situation and competent to sue in this court."

The limitation of parties thus made by appellees' statement in their bill emphasizes the sole fact to be determined to require this court to grant this motion, namely, that appellees in and by their bill of complaint invoked the jurisdiction of the District Court as a Federal Court solely because they were aliens.

Citizenship or the Nature of the Cause of Action Gives Jurisdiction.

Jurisdiction is invested in the Federal Courts either by citizenship of the parties, or by the nature of the cause of action.

This distinction is well stated by Mr. Justice Gray in the opening paragraph of the opinion in Press Publishing Company v. Monroe, 164 U. S.

105, text p. 110, 41 L. ed. 368, and the conclusion of this court upon which the writ of error in that case was dismissed is expressed in these words:

"The complaint alleging that the plaintiff was a citizen of Illinois, and the defendant a citizen of New York and claiming damages in a sum more than $2,000, showed that the Circuit Court had jurisdiction of the case by reason of the parties being citizens of different states."

In the case at bar the jurisdictional averments of the bill followed the language of the Act of August 13, 1888, as closely as the words of the statute could be expressed, and in its first paragraph as preliminary to any statement of their cause of action appellees set out that they came into the Federal Court because they were all aliens and the defendant was a citizen of the State of Florida, and that the value of the matter in dispute was above the jurisdictional amount.

The whole and only purpose of these preliminary averments was to invoke the jursdiction of the trial court as a court of the United States.

For this court to hold that jurisdiction of the District Court depended also on other grounds it must distinctly appear by the legal and logical allegations set forth in the bill. The distinction between the cases in which the decrees of the Circuit Court of Appeals is final and those in which a second appeal may be had is pointed out by Mr. Justice Moody in MacFadden v. United States, 213 U. S. 288, text p. 294, 53 L. ed. 802.

It is there said:

"But the line of division between cases appealable from the Circuit Courts of Appeal to this court and those not so appealable * * * is determined, not by the nature of the case or of the questions of law raised, but by the sources of jurisdiction of the trial court * * * whether the jurisdiction rests upon the character of the parties, or the nature of the case."

As said by Mr. Justice McKenna speaking for this court in Ayers v. Polsdorfer, 187 U. S., text 590, 47 L. ed. 315–316:

"Therefore when the jurisdiction of the Circuit Court is invoked solely on the ground of diversity of citizenship, two classes of cases can arise; one in which the questions expressed in section 5 (Act 1891) appear in the course of the proceedings, and one in which other Federal questions appear. Cases of the first class may be brought to this court directly, or may be taken to the Circuit Court of Appeals. But if taken to the latter court they cannot be brought here. Cases of the second class must be taken to the Circuit Court of Appeals, and its judgment will be final."

In dismissing the writ of error to the Circuit Court of Appeals in that case, speaking of the judgment of that court, this court said: "That the ruling was error we are not called upon to say. Granting it to have been, we are powerless to review it."

The same must be said upon the many assignments of error in the case at bar.

Federal Question Not Disclosed.

As appellant has failed to point out in its assignment of errors in the District Court, or upon this appeal any Federal question upon which the decision of the court of first instance depended in any degree, counsel for appellees are not advised upon what ground appellant will now contend the decree of the Circuit Court of Appeals herein is not final.

We are unable to find in the statement of our cause of action or in the progress of the cause any ground upon which to rest a contention that the controversy in any way involved the construction of the treaty or any Federal law, and certain it is appellees' statement of their case sets out no such grounds.

If it be claimed in argument that a Federal question developed in the cause appellant should have gone directly to this court for a review of the decree of the District Court, if the question was of the class enumerated in section 238, Judicial Code; and if such question be claimed to be of the class set out in section 24, appellant's appeal to the Circuit Court of Appeals was regular.

Upon either contention this appeal may not be sustained.

Sections 128, 238 and 240, Judicial Code were not intended to give a party defeated in the District Court the right to have his case deter-

mined upon the merits, both in the Circuit Court of Appeals and in this court.

> Colorado Central, etc., Co. v. Turke, 150 U. S. 138, 37 L. ed. 1030.

It is apparent from the assignment of errors in this court and in the Circuit Court of Appeals that appellant seeks two appeals upon the merits, and as appellees contend, without regard to the operation or effect of the Constitution, a treaty or any Federal law. Of the thirty-eight assignments of error on this appeal, those numbered from 4 to 38 are the same thirty-five assignments of error filed on appeal from the decree of the District Court (the record, pages 1041 to 1050—102 to 110).

No Independent Ground of Jurisdiction Existed.

To enable this court to find that the jurisdiction of the District Court rested not alone upon the alienage of appellees and the citizenship of the appellant as set out in the jurisdictional averments of the bill of complaint, it must appear therefrom that the District Court could have taken jurisdiction of the case *independently* of the citizenship of the parties.

In the language of Mr. Justice Shiras, speaking for this court, in the case of Florida Central, etc., Co. v. Bell, 176 U. S. text 325, in order to main-

tain the jurisdiction of this court after the decree by the Circuit Court of Appeals

"it must appear that the jurisdiction of the Circuit Court was *not* dependent solely upon the opposite parties being citizens of different state"

in the case at bar aliens on the one hand and a citizen on the other.

That there exists in this case no ground of jurisdiction in the District Court independent of the alienage of appellees must be apparent.

If appellees in their bill had alleged their cause of action arose under the treaty or a Federal statute, such averments would have been ineffectual.

Florida Central, etc., Co. v. Bell, 176 U. S. 321, 44 L. ed. 486.

Western Union Co. v. Ann Arbor R. Co., 178 U. S. 239, 44 L. ed. 1054.

Filhiol v. Maurice, 185 U. S. 108, 46 L. ed. 829.

Joy v. St. Louis, 201 U. S. 332, text, 341, 342, 50 L. ed. 781.

The language used by Mr. Chief Justice Fuller in Empire State, etc., Co. v. Hanley, 198 U. S. text 297, 298, 49 L. ed. 1058, is so apposite to describe the case at bar as to call for quotation.

Speaking for this court upon the motion to dismiss the writ of error to the Circuit Court of

Appeals in that case, that learned and lamented Chief Justice said:

"If this had been a writ of error to a State court, the averments would not have brought it within section 709, Rev. Stats. If it had been a direct appeal from the Circuit Court * * * it could not have been sustained because the construction or application of the Constitution of the United States was not distinctly presented for decision in the court below. As an appeal from the Circuit Court of Appeals under section 6 of the Act of 1891 it can not be sustained because it falls within the settled rule, that where the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship, it will not be held to rest also on the ground that the suit arose under the Constitution of the United States unless it really and substantially involves a dispute or controversy as to the effect or construction of the Constitution, upon the determination of which the result depends, and which appears on the record by a statement in legal and logical form, such as good pleading requires, and where the case is not brought within this rule, the decree of the Circuit Court of Appeal is final. (Citing cases.)

"If the allegation of diversity of citizenship had been omitted from the bill, the jurisdiction could not have been maintained. The decisions of the courts below did not turn on any Federal question."

It is clear, looking at the allegations of the bill, that it set out no independent ground of jurisdiction in the statement of appellees' cause of action.

After the jurisdictional averments in the opening paragraph of the bill, after reciting the source of their equitable estate, appellees allege they hold a legal title from the United States, and set out

the patent to them as evidence thereof, and upon that legal title they invoke the aid of the Court against the claims of appellant upon rights accruing under general principles of law and in no way arising out of or dependable upon any Federal law or any treaty.

Those common-law rights appellees were privileged to have enforced in the Federal court, they being of more than the value of $2,000 and appellees being all aliens and appellant a citizen of the State of Florida.

The patent recited the original source of their right to the land conveyed, but there was in the cause of action no controversy between the parties as to the construction of the law under which the patent was issued. The whole controversy rested upon the nature of the antecedent title derived from Spain, whether it was an equitable right as alleged in their bill by appellees, or was a full and complete legal title without the issuance of a patent from the United States.

Appellees in their statement of their cause of action pitched their title solely upon the patent from the United States, as did the plaintiff in Bonin v. Gulf Company, 198 U. S. 115, 40 L. ed. 972, where this court said in dismissing the writ of error:

"The jurisdiction of the Circuit Court rested alone on diversity of citizenship. The assertion of title under a patent from the United States presented no question which of itself conferred jurisdiction. No dispute or controversy as to the effect or construction of the Constitution or of any

law or treaty of the United States, on which the result depended, appeared by the record to have been really and substantially involved, so that it could be successfully contended that jurisdiction was invoked on the ground that the suit arose under Constitution, law or treaty * * * plaintiffs' petitions did not assert, in legal and logical form, or at all, the existence of a real controversy, in itself constituting an independent ground of jurisdiction.

"The judgment of the Circuit Court of Appeals was, therefore, final and the writ of error must be dismissed."

This Case the Converse of a Claim Where the Title Under Spain was Complete.

The case at bar upon the pleadings is the converse of the case of Mitchell v. Furman, 180 U. S. 402, 45 L. ed. 596. In that case the complainants contended their title was complete before the cession and was confirmed by the treaty, and in their bill alleged their cause of action arose under the treaty and that the controversy involved the construction of the treaty, and sought to set aside a patent from the United States as a cloud upon their pre-existing title.

In the case at bar complainants alleged their legal title emanated from the United States and was evidenced by their patent, and upon that legal title sought to remove as a cloud on title certain tax deeds made under authority of the statutes of the State of Florida.

The issue made by the pleadings in the case at bar is the same issue made in the case of Muse v.

Arlington Hotel Co., 168 U. S. 430, and as in that case the jurisdiction of the trial court was invoked on the ground of diverse citizenship, so in this case jurisdiction of the Federal Court was invoked on the ground of alienage of the complainants in the bill.

Dismissing the writ of error in that case, this court said, upon the issue made, as to whether the grant was a complete title or an unconsummated claim under the foreign sovereignty:

"It was for the Circuit Court to determine into what category the alleged grant fell. In doing so, the construction of the treaty was not drawn in question in any way."

The court also said what is conclusive upon this motion, namely: "If this case had been taken to the Circuit Court of Appeals, the decision of that court would have been final."

When a suit arises under the Constitution or laws of the United States was clearly pointed out by Mr. Chief Justice Waite in Gold Washing, etc., Co. v. Keyes, 96 U. S. 199, 24 L. ed. 658.

After quoting the language of Chief Justice Marshall in 6 Wheat. 379, and 9 Wheat. 822, he says,

"a suit does not so arise simply because in the progress of the cause it may become necessary to give a construction to the Constitution or laws of the United States. The decision of the case must depend upon that construction. The suit

must in part, at least, arise out of a controversy between the parties in regard to the operation and effect of the Constitution or laws upon the facts involved. To give jurisdiction it must in some form appear upon the record by a statement of facts in legal and logical form, such as required in good pleading, that the suit is one which really and substantially involves a dispute or controversy (between the parties) as to a right which depends upon the construction or effect of the Constitution, or some law or treaty of the United States."

A case arises under the Constitution and laws of the United States whenever the party plaintiff sets up a right to which he is entitled under such laws, which the party defendant denies to him, and the correct decision of the case depends upon the construction of such laws.

Ex Parte Lennon, 166 U. S. text 553, 554, citing numerous cases.

A case does not arise under the laws of the United States unless

"it appears from the questions involved, that some title, privilege or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law of the United States or sustained by the opposite construction."

Starin v. New York City, 115 U. S. text 256, 29 L. ed. 390.

Appellees' Rights Depended Upon Their Equitable Title Before the Cession of Florida.

Appellees' statement of their cause of action set out rights which had their origin under the laws of a foreign sovereignty, though held under the laws and patent from the United States.

They alleged in their bill an equitable title under Spain and a legal title from the United States from the date of the patent, and set out that the land described in their patent was ceded by Spain to the United States.

The questions of fact thus alleged were determinable by the laws and ordinances of Spain.

> United States v. Kingsley, 12 Peters, text 484, 9 L. ed. 1166.
>
> Fremont v. United States, 17 How. 542, text 554.
>
> McMicken v. United States, 97 U. S. 204, 24 L. ed. 949.

Their controversy with appellant in no way depended upon the construction or effect of the treaty or any Federal law.

The legal effect of the patent was to release and quitclaim to the legal representatives of Teresa Rodriguez, whoever they might be by the general principles of law, all interest of the United States in the lands described in the patent.

This is well settled by the terms of the patent, the decisions of this court, and by the express

words of the statute, section 2447, Revised Statutes, recited in the patent and under which it was issued (record, page 843).

The only statutes of the United States mentioned in the bill are the act of March 3, 1807, and the act of May 23, 1828, extended by the act of May 26, 1831 (record, pages 7, 8).

Appellees set up no rights under the act of 1807. The fact that they were prohibited by that act from taking possession of the land granted by Spain (if it could have been located by the description contained in the grant itself) before the United States recognized and confirmed their title, did not determine the principal issue as to whether or not the title derived from Spain was inchoate or complete, nor the subordinate issue dependent thereon, whether the lands confirmed by the act of 1828 were taxable by the State of Florida, while the United States claimed them as part of the public domain.

Appellees set out no cause of action arising under the act of 1828 or dependent upon the construction or effect of that act.

Certainly no right, dependent upon the correct construction of the act for no such right or any right of appellees in any way connected with the act of 1828 was denied by appellant.

Appellant not only admitted all the rights appellees claimed in their bill from the confirmation of their grant, but insisted the act of 1828 confirmed the grant to its full area as made to Mar-

cos, and further insisted the grant needed no aid from the act, but was complete under Spain; that no patent from the United States as prescribed by the act was necessary, that the lands became taxable by the passage of the act, without any patent from the United States; and upon the issuance of the patent by the common-law doctrine of relation such was the effect of the patent.

Granting for the sake of the argument all appellant's contentions yet they must all fall, because appellees in their statement of their cause of action, which the proof establish and which was not controverted by any evidence, set out that the lands granted Marcos had never been surveyed under the Spanish sovereignty, and passed at the cession to the United States as a part of the Royal domain.

They alleged that the effect of the Act of 1828 was to confirm to Teresa Rodriguez an inchoate right to a league square or 4,438 acres, as the league was held by this court and by the Land Department until A. D. 1894 to contain, which 4,438 acres were to be laid off by survey within the bounds of the grant.

Appellant's contention is that the issuance of the patent determines that the legal effect of the Act of 1828 referred to in appellees' statement of their case was to confirm the 5,500 granted to Marcos, but whether it confirmed only 4,438 acres or the whole 5,500 acres is wholly immaterial.

If it be that the Act of 1828 confirmed the grant to the full extent of its area, yet its effect was

controlled by the nature of the title held by Marcos under Spain, and by the fact that the lands were not only an unsegregated part of the Royal domain, but the grant itself contained no point for the beginning of a survey.

The controversy as to the area confirmed by the act was an immaterial issue in the cause, because the nature of the claim left the legal title to the land in the United States after confirmation.

The right confirmed by the act was a right to have a league square of the public lands of the United States, to be located and patented by the United States.

United States v. Wiggins, 14 Peters, text 350.

D'Autrive v. United States, 101 U. S. 700–706, 25 L. ed. 871.

Maguire v. Tyler, 8 Wall. 650.

Slidell v. Granjean, 111 U. S. 412, 28 L. ed. 330.

United States v. Forbes, 15 Peters, text 182–184.

In the case last cited this court said:

"All the domain of Spain was ceded to this government by the treaty of cession, and the title in fee vested in the United States. No survey of the land granted was ever made * * * No particular land having been severed from the public domain by John Forbes, this was the familiar case of one having a claim on a large section of country unlocated, in its nature not differing from the holder of a land warrant in the American States."

In United States v. King, 7 Howard, p. 847, this court said:

"Under the treaty with Spain the United States acquired in sovereignty all the lands in Louisiana which had not before been granted by the Spanish government and severed as private property from the Royal domain."

In United States v. Lawton, 5 Howard, text p. 28, this court said:

"The court not being able in this instance to derive any assistance from public acts beyond the face of the grant * * * has presented to it a territory some thirty miles long * * * at any one point in which distance the survey might be commenced with equal propriety that it might be at any other point. It follows that the description when applied to the facts is too vague and indefinite for any survey to be made, and that therefore the claimant can take nothing under the concession."

In Buyck v. United States, 5 Peters, text 223, this court said:

"But further supposing proof of the grant to be made * * * still it could convey no land for want of identity or ascertainable locality."

The legal effect of the act of 1828 upon the facts set out by appellees in their bill was to recognize in Teresa Rodriguez an equitable claim for a league square of the public domain of the United States, to be located and patented by the Land Department. The construction of the act of 1828 was in no way involved, but only the nature of the antecedent title of Teresa Rodriguez confirmed by that statute.

As this court said in McDonough v. Millaudon, 3 Howard, text 706:

"That the grant stands recognized as complete and valid against the United States * * * we have no doubt * * * the recognition extended only to the boundaries the grants themselves furnished."

It therefore follows, if it be contended that the construction or the effect of the act of 1828 was required by the appellees' statement of their case to be decided, yet that decision depended wholly upon the nature of the grant to Marcos, whether or not it was a perfect or an inchoate title under Spain, and that decision was controlled by the laws of Spain, upon the facts alleged.

The taxability of the land which was the ultimate issue was to be determined by a finding of the category into which the grant fell, and this appears by appellees' statement of their cause of action.

Appellees by their statement in their bill made a case of the class with Romie v. Casanova, 91 U. S. 379, 23 L. ed. 374, and McStay v. Friedman, 92 U. S. 723, 23 L. ed. 767.

The argument upon this point is only to meet the contention if it shall be made by appellant, that upon the facts alleged in the bill the effect of the act of 1828 was to be determined; that there was a dispute between the parties in regard to the operation or effect of that statute.

Appellees deny there was any controversy as to the operation or effect of the confirmatory act. They alleged that from A. D. 1828 to A. D. 1894 it had been held by the Land Department that that act confirmed title to only 4,438 acres, but they also alleged that in A. D. 1894 this ruling was reversed and it was determined that the act confirmed 6,002 acres.

Appellees accepted this determination, in fact by it they got a quitclaim to the land from the United States.

Admitting that the 5,500 acres granted to Marcos was confirmed by the act of 1828 and in A. D. 1828 yet the ultimate issue of whether the lands were taxable before the issuance of the patent depended upon whether the legal title thereto passed to the United States at the cession or whether it was then held by Teresa Rodriguez, widow of Marcos, and that was a fact dependent on the nature of the title under Spain.

To Whom the Patent Quitclaimed the Land.

The real controversy between the parties upon the case made by the bill was to whom the title passed, when the patent from the United States issued.

That was to be determined by the nature of the antecedent Spanish title by the express terms of the confirmatory statute and the patent.

The patent which issued June 26, 1895, ran to Teresa Rodriguez and her legal representatives.

The legal effect of appellees' statement of their rights is to establish that they are the legal representatives named in the patent, because as they alleged, their legal title to the land emanated from the United States in A. D. 1895 and was uneffected by the State revenue laws in force in 1845 and thereafter upon general principles of law.

The confirmation of the equitable right in Teresa Rodriguez by the act of 1828 they admitted.

The real controversy, namely, who took the legal title to the lands as her legal representatives under the patent, was to be determined in this cause not by the time when this equitable right was confirmed or whether it was confirmed for 4,338 acres or for 5,500 acres, but by the Court's finding whether or not under the general principles of law, an inchoate Spanish grant was subject to State taxation: in other words whether the public lands of the United States are taxable by a State.

Manifestly the cause of action could not arise out of the act of 1828 or any Federal law.

The act of 1828 was not presented to the court by the statements of the bill (nor even by the denials and averments of the answer if that could be looked to) for construction with the contingency that appellees' case would be sustained by one construction of such statute and defeated by another.

Cook v. Avery, 147 U. S. text 384, 385, 37 L. ed. 212.

Bankers', etc., Co. v. Minneapolis, etc., Co., 192 U. S. 371, 382, 386, 48 L. ed. 490.

It was the settled construction of the act of 1828 that all claims confirmed thereunder were required to be patented by the United States.

> United States v. Wiggins, 14 Peters, text, p. 350, 10 L. ed. 489.

It had also been settled by this court that the act applied to complete titles as well as inchoate title.

> Mitchell v. Furman, 180 U. S. text 438, 45 L. ed. 612.

Whether the act of 1828 was construed to confirm the grant to the extent of 4,438 acres as appellees in their pleading alleged or for the full area of the grant was immaterial, since if the grant was a tract of unsegregated land without identity and containing in its description no ascertainable locality, it fell into the area of the public lands and upon general principles of law was not subject to State taxation until the United States segregated and released its claim thereon by patent.

The bill alleges that the survey by which the lands were segregated from the public domain was not approved until June 18, 1894 (the record, page 18, paragraph 32 of the bill. The patent page 838 of the record). The patent did not issue until June 26, 1895 (paragraph 34 of the bill, page 19 of the record).

It is therefore entirely clear that upon appellees' statement of their cause of action, it did not

and could not appear, it arose out of the act of 1828, or that that statute, its construction or effect in any way entered or was required to enter into the determination of the rights appellees sought to have enforced in this suit.

Rules Which Govern on This Motion.

That the right of review upon the merits in this court and in the Circuit Court of Appeals is denied by the statute in all cases where the jurisdiction of the Federal Court of first instance is dependent entirely upon citizenship will be conceded, hence the only question open on this motion is upon what ground appellees invoked the jurisdiction of the now District Court as a Federal Court.

The rules by which this court must determine this question have been stated by Mr. Justice Van Deventer in the case of Shulthis v. McDougal, 225 U. S. 561, 56 L. ed. 205, with a precision and clearness which can not be improved, as follows:

"First: Whether the jurisdiction depended upon diversity of citizenship alone or on other grounds as well, must be determined from the complainants' statement of their own cause of action as set forth in their bill, regardless of questions that may have been brought into the suit, by the defendant's answer, or in the course of the subsequent proceedings herein.

"Second: It is not enough that grounds of jurisdiction other than diverse citizenship may be

inferred argumentatively from the statements of the bill, for jurisdiction can not rest on any ground that is not affirmatively and distinctly set forth in complainants' bill.

"Third: A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such law, upon the determination of which the result depends."

It would be supererrogatory to cite or discuss the cases cited by the learned justice. The rules were again announced and approved in Lovell v. Newman, 227 U. S. text, p. 421.

It is deemed not inappropriate to give the reason for the rules above stated in the language of Mr. Justice Harlan, speaking for this court in Loeb v. Trustees, etc., 179 U. S. 475, 45 L. ed. 286:

"When the question is whether the judgment of the Circuit Court of Appeals is final in a particular case, it may well be that the jurisdiction of the Circuit Court, within the meaning of that section (section 6 of the Act of 1891) is to be regarded as dependent entirely upon the diverse citizenship of the parties, if the plaintiff invoked the authority of that court only upon that ground, because in such a case the jurisdiction of the court needed no support from the averments of the answer, but *attached* and *became complete* upon the allegations of the petition."

No Question Respecting Any Treaty or Federal Statute Was Submitted by Appellees' Statement of Their Case.

In the case at bar it appears from the statements of the bill of complaint that the suit was one of which cognizance could properly be taken on the ground that the complainants therein were aliens, the defendant a citizen of the State of Florida, and the value of the amount in controversy above $2,000 and it does not appear therefrom that jurisdiction was vested or could be asserted on any other ground; but the contrary appears on the face of the bill, and from the rules of pleading.

Upon the jurisdictional averments of the bill in its introductory paragraph, jurisdiction attached and became complete.

In the words of Chief Justice Marshall: "The third article of the Constitution enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States, when any questions respecting them shall assume such a form that the judicial power is capable of acting on it. The power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case."

Osborn v. Bank of United States, 9 Wheat. text 819, 6 L. ed. 223.

Appellees by their bill did not state any question of treaty or Federal law in such form that judicial power was capable of acting on it, nor did they submit to the District Court for its exercise of judicial power any question arising out of treaty or Federal law, and it appears on the face of their bill, that solely because they were privileged by alienage they sought the Federal rather than the State Court for the enforcement of common law rights under a patent from the United States.

As this Court said speaking by Chief Justice Fuller in Devine v. Los Angeles, 202 U. S. text, p. 334, "complainants prayed for a decree quieting their title to the lands described in the bill, but the averments did not bing the case within the classes of bills of peace or to quiet title recognized by the usual chancery practice."

The bill in the case at bar was brought to enforce the rights of appellees as patentees from the United States conferred by general law and enforceable in equity under section 1950, general statutes of Florida, which extended the equitable remedy to any person claiming to own lands whether in possession or not, against any person not in actual possession to remove a cloud on title. That the adverse claim is void on its face is no bar to jurisdiction.

In a bill to remove cloud on title under the practice in Florida an allegation, in ordinary and concise terms, of the ultimate fact, that the plaintiff is the owner in fee is sufficient without setting out

matters of evidence, or what have been sometimes called probative facts, which go to establish that ultimate fact.

> Ely v. New Mexico, etc., Co., 129 U. S. 291, 32 L. ed. 689.

The recitations in the bill in the case at bar of the sources of appellees' title were unnecessary. Such recitations were set out but as facts in the history of the case.

Whether the patent ran to them or to appellant because the land was duly and regularly sold for nonpayment of taxes prior to the issuance of the patent was the ultimate issue to be determined in the suit, and this was to be determined not by Federal law, or any Federal statute, but by the character of the title made to appellees' ancestor before the cession.

> Gill v. Oliver, 11 How. text 546, 548, 13 L. ed. 807.
>
> Devine v. Los Angeles, 202 U. S. text 333, 334, 50 L. ed. 1053.

The question whether appellees claimed a right under the treaty or the laws of the United States must be ascertained by the legal construction of the proper and necessary allegations of their bill, and not by the effect attributed to those allegations by appellant.

> Central R. R. Co. v. Mills, 113 U. S. text 257, 28 L. ed. 952.

Mr. Justice Miller has so succinctly defined a suit arising under a law of congress that the indulgences of the court is asked to print the same here.

That learned justice said, dissenting in the case of New Orleans, etc., Co. v. Mississippi, 102 U. S. 135:

"What is meant by the suit arising under a law of Congress? The obvious answer seems to be that the *cause of action is founded* on the Act of Congress: that the remedy sought is one given by an Act of Congress: that the *relief* which is prayed is a relief *dependent on* an Act of Congress: that the right to be enforced in the suit is a right which *rests* upon an Act of Congress."

If the definition given by the learned justice is correct, and who will dispute it, then the case at bar is not a case arising under a Federal statute, nor a treaty, because there is a total absence from the case and from appellees' statement of their case as made by their bill, of any of the essential elements of a case arising under Federal statute or treaty.

Upon appellees' statement of facts it is clear their cause of action arises under the revenue laws of Florida and was determinable upon facts dependent upon the laws and ordinances of Spain.

The presumption is that a case is without the jurisdiction of the District Court, unless the contrary affirmatively appears.

The averment of essential facts "must show clearly and distinctly that the suit is one of which the Circuit Court is entitled to take cognizance."

> Hanford v. Davies, 163 U. S. text, p. 280, 41 L. ed. 159.

The rule is inflexible that in the exercise of its appellate powers this court will deny jurisdiction of all cases where such jurisdiction does not affirmatively appear in the record on which it is called upon to act.

> Colorado Central, etc., Co. v. Turk, 150 U. S. text, 143, 37 L. ed. 1032.

It is submitted that upon the record and law it is clear that no ground for the Circuit (now District) Court's jurisdiction existed, except the alienage of appellees, and the citizenship of appellant, and that accordingly this appeal should be dismissed.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors and Counsel for Appellees.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1914.
No. 186.

WILSON CYPRESS COMPANY,
Appellant,

v.

ENRIQUE DEL POZO Y MARCOS *et al.*,
Appellees.

REPLY BRIEF OF COUNSEL FOR APPELLEES ON THE MOTION TO DISMISS FOR WANT OF JURISDICTION.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors and Counsel for Appellees.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1914.

No. 135.

WILSON CYPRESS COMPANY,
Appellant,

v.

ENRIQUE DEL POZO Y MARCOS *et al.*,
Appellees.

REPLY BRIEF OF COUNSEL FOR APPELLEES ON THE MOTION TO DISMISS FOR WANT OF JURISDICTION.

On October 20th, 1913, a motion to dismiss this cause for want of jurisdiction was filed in this Court, notice and brief having been filed in compliance with Rule 6.

On October 7th counsel for appellant filed a brief in opposition to the motion to dismiss. No reply brief was then filed because the argument made by the brief of counsel for appellant proceeded upon the ground that upon this motion to dismiss this Court will consider the grounds set up by way of defense to the action, also the opinion of the trial Court.

See pages 2-5-8-10-12-13-14-15-16-17-18-26 and 27 of the brief of counsel for appellant.

Counsel for appellees relied and do rely upon the rule of practice that in a cause brought up under Section 241, Judicial Code in, determining whether the jurisdiction of the trial Court was dependent entirely upon the opposite parties to the suit being aliens and citizens of the United States, this Court will consider only the complainants' statement of their cause of action as set forth in their bill.

In the determination of whether this Court has jurisdiction to review a cause there is a radical difference in the governing rule between cases brought directly to this Court from the District Courts and from the highest State courts, and cases which come here upon appeal from the decrees of the Circuit Court of Appeals.

In the two classes of cases where the appeal is direct, Congress has conferred jurisdiction upon this Court to review a prescribed class of cases, all involving a constitutional or treaty right or privilege asserted on the one hand or denied on the other; that is where there existed in the District Court or the highest State Court a substantial controversy with respect to such constitutional or treaty right or privilege either asserted or denied and which either the plaintiff or the defendant in the lower court relied upon and sought a decree thereon, because it was a constitutional or treaty question.

In this class of cases the defendant as well as the plaintiff may in his pleadings and contentions in either the Federal trial Court or in the State trial or Appellate Court present the Federal question which confers on this Court jurisdiction to review.

It is this class of cases which counsel for appellant have cited in their brief on the pending motion to dismiss.

They are not authority upon this motion.

Metcalf *v.* Watertown, 128 U. S. 586, text 589.

Acts of Congress Distributing Jurisdiction.

The acts of Congress, the act of March 3rd, 1891, and the Judicial Code exhibit the intent of Congress to confine the appellate jurisdiction of this Court to controversies submitted to a Federal trial Court or to the highest State Courts, because they involve, or wherein is involved, a substantial controversy between the litigants asserted or denied in a judicial proceeding with respect to some title, right, privilege or immunity arising under the Constitution, a Treaty or Federal statute.

By the Judicial Code Congress has confined to the Circuit Court of Appeals the review of all cases other than (*a*) jurisdictional cases, (*b*) prize cases, (*c*) cases involving the construction or application of the Constitution, (*d*) or the constitutionality of a Federal law or the validity or construction of a treaty, (*e*) statute laws claimed to contravene the Federal Constitution. Sections 128 and 238, Judicial Code.

It has conferred jurisdiction on the District Court to hear (with other causes) all suits where the amount in controversy exceeds $3,000, (*a*) that arise under the laws, etc., of the United States; (*b*) all suits between citizens of different States, and (*c*) between citizens and aliens.

The District Court has jurisdiction to hear and determine *all* suits brought by aliens against citizens. Such suits therefore may embrace any justiciable matter under the common, State or Federal law or arising out of the Constitution or a treaty.

Where there is diversity of citizenship between litigants on either side, actions may be brought in the Federal Courts (*a*) because the plaintiff seeks its jurisdiction because of non-citizenship, or (*b*) because plaintiff seeks its jurisdiction to determine a claim

set up and relied upon depending upon a Federal law, or a treaty or the Constitution.

In case (*b*) there may exist a double ground of jurisdition, namely, the privilege which the statute confers on non citizens to come into the Federal Court in any cause which is here exercised to enforce a right determinable by Federal law, the Constitution or a treaty.

If plaintiff in his statement of his cause of action does not invoke the jurisdiction of the trial Court for the protection of any right or title set up by him as conferred under the Constitution, a Treaty or by a Federal statute, and dependent upon such statute, then the fact that being a non-citizen he has exercised his privilege to sue in the Federal Court and set out in his bill a statement of the Court's jurisdiction on the ground of citizenship must be deemed a selection of the Federal Court upon the sole ground of citizenship.

M'Cormick *v.* Sullivan, 10 Wheat. 192, text 199.

The suit is then "dependent entirely" upon diversity of citizenship.

Dependent is that which is without the aid of something else.

Except in the class of cases directly appealable to this Court, this aid must be sought (invoked) by the plaintiff.

Louisville & Nashville R. R. *v.* Mottley, 211 U. S. 149, text 152.

Jurisdiction of the Trial Court under Section 241 Judicial Code.

In cases brought to this Court by direct appeal under Sections 237 and 238 Judicial Code, the nature of the case and the questions of law raised by the defense may be looked to by the Court to determine

its jurisdiction, but under Section 241 Judicial Code, this Court may look for the sources of the jurisdiction of the District Court only in the statement of his case made by the party who invoked the jurisdiction of that Court.

If the plaintiff has not invoked the jurisdiction of that Court as a Federal Court to support a right or claim substantially dependent upon the validity, construction or effect of a Federal law (or Treaty) which the plaintiff prefers be construed or applied by that Court rather than by a State Court, then even though the right or title may arise out of a Federal law, any decree made in the District Court is subject to only one appeal. If taken to the Circuit Court of Appeals its decree may not again be reviewed by this Court on appeal.

To make the jurisdiction of the District Court dependent upon a Federal question there must have been: First, an actual dispute between plaintiff and defendant as to the construction or effect of some law of the United States; and Second, its construction or effect of such law must have been material to the determination of the case.

California Oil & Gas Co. *v.* Muller, 96 Fed. Rep. 12, text 16.

Where the statute has imposed limitations upon the right to review decisions of a lower court to cases where the jurisdiction depends upon the presence of controversies of a particular character * * * substance and not mere form is the test of the power, and therefore even in a case where requisite jurisdiction formally exists, the right to review does not obtain where it is evident that the formal questions as presented by the record are so wanting in substance as to cause them to be devoid of merit.

United States *ex rel.* Brown *v.* Lane, 232 U. S. 598, text 600.

Reliance upon the Defense to Maintain Jurisdiction of this Court.

It is apparent from their brief that counsel for appellant rely upon the defense made in the trial Court and the opinion and decree rendered in the District Court to maintain the jurisdiction of this Court to review the decree appealed from.

On page 10 of the brief it is said: "The defendant insisted in its answer that the grant was confirmed as a complete and perfect title by the force and effect of this treaty. Therefore the construction and application of the treaty to the grant and the language of the grant must be considered and determined," etc. On page 12 of the brief it is stated that "in their bill appellees maintain that under the Act of May 23, 1828, a survey of the grant and a patent was necessary to pass the title of the United States and that the title to the property remained in the United States until the patent was issued in 1895. All these contentions as to the force and effect of this Act of Congress are denied by the defendant, and directly put in issue by the bill and answer and passed upon by the District Judge in his decree and opinion," and on page 13: "The defendants deny that the ruling or action of the Law Department prior to the final decision and ruling by the Secretary of the Interior had any such legal effect upon the possession or title to this land, and insist that from the confirmation of the grant by Congress, May 23, 1828, the legal title and right of possession in these lands was in Teresa Rodriguez and her heirs and assigns."

On page 15 the brief says: "The appellant alleged in the answer that the grant did not require any survey under the terms of the grant and laws of the United States, that under proper construction of the laws of the United States," etc. On page 16: "The appellant (wrongly printed appellees) insisted no patent from the United States was necessary to perfect this title," etc.

On page 18 the brief incorrectly states that "In the bill of complaint (p. 8 of the Record), it is asserted by appellees that by the force and effect of the Act of Congress, of March 3, 1807, appellees * * * were excluded from the possession of the

land," etc., * * *. The District Judge in his opinion * * * found and determined," etc. On page 25 it is said: "The bill of complaint in this case, all of the pleadings, the judgment and decision of the District Court and that of the United States Circuit Court of Appeals affirming the final decree of the District Court certainly disclose the necessity for considering a number of Federal questions in the determination of this case."

From these excerpts from the brief of counsel for appellant it will be seen that to sustain counsels' contention that jurisdiction of the trial Court as a Federal court was invoked by appellees for the protection of a right which substantially involved a dispute respecting the construction or effect of the Treaty or the Act of 1828, or 1807, or all of them, resort is had to the defenses set up in appellant's answer, and to the opinion and decree rendered in the District Court and the decree appealed from.

The rights of appellees upon which they relied as distinctly set forth in their bill, discarding the historical statements and ignoring all statements thereof not required by good pleading, have been pointed out in the brief filed by counsel for appellees with the motion to dismiss and need not be here repeated.

Under Appellant's construction of the Law, two appeals would be allowed whenever plaintiff's rights originated under a Federal Law.

The construction of the Judicial Code contended for by appellant would allow two appeals on the merits in every cause where the jurisdiction of the District Court is invoked by reason of diverse citizenship, if the plaintiff seeks to enforce therein a right which has its origin in a Treaty or the laws of the United States.

The Judicial Code upon this construction puts an

alien and a non-citizen at a disadvantage in all litigations to enforce a claim having its origin in a Treaty or Federal statute.

We contend this privilege given by the Judicial Code of two appeals upon the merits is granted solely in those causes where the trial Court is sought as a Federal court for the protection of some right or title which is dependent upon a Federal statute, so that by one construction of the statute recovery may be had, and by another construction of the statute recovery will be defeated; that the privilege may be availed of only when by proper pleadings the plaintiff invokes the jurisdiction of the District Court as a Federal court upon grounds independent of citizenship, and only when the case made by plaintiff's statement in legal and logical form substantially involves a controversy between the parties respecting the validity, construction or effect of a Federal law or Treaty right, upon the determination of which the result depends.

Where the contest is about the facts only, the law being undisputed as in the case at bar, the cause is not one that arises under the laws of the United States, though the title to the land in controversy is traced to a United States land patent.

Theurkauf *v.* Ireland, 27 Fed. Rep. 769–770.

McFadden *v.* Robinson, 22 Fed. Rep. 10–12.

Austin *v.* Gagan, 39 Fed. Rep. 626.

Murray *v.* Bluebird Min. Co., 45 Fed. Rep. 385.

This Court did not grant the motion to dismiss, therefore it would appear that the contention of counsel for appellant appeared substantial; it therefore seems proper to make some reply to the brief filed in opposition to the motion to dismiss.

The Bill does not invoke jurisdiction for determination of a Federal right.

That the jurisdiction of the trial Court was invoked upon the ground of the alienage of complainants therein, must be conceded. The inquiry here is whether the bill of complaint warrants the assertion of appellant in its brief (p. 2) that the jurisdiction of the court as a Federal Court was also invoked upon the ground that the suit was one arising under Federal law, or the Treaty with Spain, and that this appears, "by the bill of complaint of the Appellees in the District Court" (Brief for Appellant on Motion to Dismiss).

The case of Denver *vs.* New York Trust Company, 229 U. S. text 133-57 L. ed. p. 1120, is in point. In that case the bill stated that the complainant was a citizen of New York, that all the defendants were citizens of Colorado, and that "this is a controversy wholly between citizens of different states".

Unlike the bill in the case at bar its jurisdictional averments did not stop with the above statement, but on complainant's statement of its case, invoked the jurisdiction of the trial Court as a Federal Court in the language of the Statute, Section 24 Judicial code. As stated by Mr. Justice Van Deventer speaking for this Court the bill "also alleges that the suit is one arising under the constitution of the United States."

There is ground to think the Trust Company selected the Federal Court rather than the State Court because it deemed that the relief it prayed was dependent on the constitution, and intended to set up rights under the constitution denied it by the defendant.

This Court held that in spite of the fact that the bill did specifically and in the words of the Statute invoke the jurisdiction of the Federal Court upon other grounds than diversity of citizenship, yet that

if the case of complainant was stated in legal and logical terms as required by the rules of pleading, it would then appear by the statement of the bill that no dispute or controversy as to the effect or construction of the Constitution on which the result of the suit depended appeared to have been really and substantially involved, and that the Trust Company's allegations in the bill as to its rights under the constitution should be disregarded, some because without merit, others because not a necessary part of its cause of action.

In the case of Florida Central & Peninsula Ry. Co. *vs.* Bell, 176 U. S. 321; 44 L. ed. 486, the plaintiff invoked the jurisdiction of the Court as a Federal Court for the enforcement of rights claimed under Federal laws in express terms.

The paragraph of the declaration which sets forth the plaintiff's claim is as follows:

"The Plaintiff's allege that they claim title to the said land under and by virtue of a patent granted by the government of the United States of America to the said Louis Bell and his heirs, upon a pre-emption claim for said land under the laws of the United States, originally commenced and filed in the local land office of the United States of America at Gainesville, Florida, in 1883, and prosecuted by the heirs of said Louis Bell and his heirs, the plaintiffs, in said land office; and upon appeal in the General Land Office of the Government, and upon and from an appeal from the decision of the commissioner of the said General Land Office to the Secretary of the Interior of the United States, the said heirs prosecuted the pre-emption claim, until by order and decision of the said Secretary the said patent was granted."

This Court held that there was no substantial controversy between the parties which depended upon a Federal statute.

It will be noted that in the case at bar as in the case last cited appellant lays stress upon the allegations of the bill giving the history of proceedings in the Land Department while the claim was there being administered.

What the bill set out as to the source of title in the United States is alleged as historical facts merely to avoid a demurrer.

The Federal questions which the brief of counsel for appellant asserts as made by the bill of complaint are not ingredient questions nor a necessary part of appellees' cause of action, and are not relied upon to make appellees' case.

Starin *v.* New York, 115 U. S. 248, text 257.

It appeared prudent, but not necessary, to detail the history of the source of appellees' title to account for a suit in A. D. 1907, upon a title under a land patent issued in A. D. 1895, upon a claim which originated in A. D. 1815, and had been in process of administration since A. D. 1826.

The allegations were set out to show how the United States claimed and obtained the ownership of the lands patented, and account for the long delay in the issuance of the patent, which recites it was issued under Section 2447, Rev. Stats., to convey the title of the United States upon a claim derived from Spain, confirmed in A. D. 1828.

These allegations are not available to determine whether appellees invoked the jurisdiction of the trial Court upon grounds other than alienage.

The history of the claim and its character as a mere land float was set forth at length only to show the Court that until the issuance of the patent, appellees were not able to come into a court.

No inchoate title derived from Spanish authorities can be maintained in a court of justice unless jurisdiction has been conferred by Congress.

Burgess *v.* Grey, 16 How., 48, text 62, 14 L. Ed., 845.

The pleader sought to avoid a demurrer to the bill upon the ground that equity refuses relief to those delaying an unreasonable time without setting out an explanation in the bill.

A party who makes an appeal to the conscience of the Chancellor should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim * * * otherwise the Chancellor may justly refuse to consider his case on his own showing without inquiry.

Badger *v.* Badger, 2 Wall. 94, 17 L. Ed. 838.

The rules of good pleading did not require appellees to set forth the source and history of their title. Prudence dictated that they should, the facts being exceptional.

"The law is well settled that in suits for the removal of clouds from title, as a general rule, an allegation in the bill that complainant is the owner in fee of the land in question, and in the actual possession thereof, or that the lands are wild, unimproved or unoccupied if such be the case, is sufficient, without setting out in detail the facts showing such ownership, as ownership is the ultimate fact, and the others are mere evidentiary facts. In other words neither the source of complainants' title, nor the links in the chain thereof are required to be alleged."

West Lumber Co. *vs.* Griffin, 54 Fla. text p. 624.

Houston *vs.* McKinney, 54 Fla. 600.

Under the rules of pleading appellees' case would have been well stated if the bill had alleged title from the United States by patent dated June 26th, A. D. 1895, and the adverse claim of appellant under the tax sales by officers of the State of Florida, without mention of the history of appellees' title, and the withholding of recognition of their inchoate claim by the United States.

Historical Recitals not Jurisdictional Averments.

That appellees' counsel have set out in their bill the history of the title taken and held by the United States and the evidentiary facts as to that title which passed to appellees by the patent from the United States in 1895 does not make the controversy with appellant one arise under the laws of the United States or under the Treaty.

California Oil & Gas Co. *vs.* Miller, 96 Fed. text 21.

Appellees did not rely upon those averments as creating a treaty right, and seek the Court's aid to enforce or protect a right under the treaty.

Upon the allegations of the bill (and in the defense made) appellant's claim rests wholly upon the force and effect of the revenue laws of Florida in force from 1845 to 1852, and in A. D. 1867 to 1872 (the Record, pp. 75 and 12).

The Real Controversy.

The controversy between appellees and appellant was, first, whether the State did, in fact, assess appellee's lands for taxes in A. D. 1846 to A. D. 1851 (the Record, p. 75); second, if it did, whether such assessment, or the assessment made in A. D. 1867–1869 is of any validity, the equitable and legal title to the lands being then in the United States.

This is wholly a question of general law.

Congress has not prescribed the form and mode in which rights set up under the laws of a State to lands patented by the United States shall be determined, but has pursued the policy of permitting such rights to be dealt with in the local tribunals.

Gauthier *v.* Morrison, 232 U. S. 452.

Congress has relegated to the State courts the great bulk of litigation under land patents.

Shoshone Mining Company *v.* Rutter, 177 U. S. 505; text 506–511.

Appellees' Right to Sue in the Federal Court.

Appellees had their option to sue in the State or Federal court only by reason of their alienage, since they claimed and set up only a right of ownership under a United States land patent.

In their bill they alleged they came into the Federal court because of alienage, and the legal conclusion from the form of their allegation is that they invoked its jurisdiction solely because of alienage (the Record, p. 2, introductory statement of the bill).

That the statement of the bill restricted the parties to those competent to sue in the Federal court is persuasive, if not controlling, upon this motion to dismiss.

Strawbridge *v.* Curtis, 3 Cranch. 267.

Nature of a Tax Deed precludes any Controversy Determinable by Federal Law.

That there was involved no controversy as to the effect or construction of the treaty or federal law is apparent upon consideration of the nature and origin of the deeds sought to be cancelled.

Appellant's claim is based upon a title from a sovereign independent of the sovereign under which appellees claim. The tax deed, if valid, is a new and independent and hostile title, which the bill prays to have cancelled of record, because of a perfect and superior title derived from the United States.

Hefrer *v.* No. West. L Ins. Co., 123 U. S. 747, 31 L. ed. 311.

No. Pacific R. Co. *v.* Traill County, 115 U. S. 600, text 610.

Appellees claiming only the rights which all others take under a patent from the United States,

namely, ownership in fee simple from a grantor holding a fee simple title, invoked the jurisdiction of the District Court to cancel of record a claim of title emanating from the State of Florida, and based their cause of action upon this conflict of title.

The Court was required to find and determine whether the State's tax levy was based upon an assessment made from 1846 to 1851, or whether the sale by the State's officer for non-payment of taxes was made without any assessment, as alleged in the amended bill (p. 75 of the Record), and even if it found, as alleged and proved, that no assessment for taxes was made prior to the tax sale in 1852, also to find and determine whether in A. D. 1867 to A. D. 1869 the lands were subject to assessment for State taxes.

Whether the Lands Subject to Taxation was determinable wholly by General Law.

That this determination and the relief prayed were wholly dependent upon the general principles of law seems too plain to require argument, if appellees statements of the nature of their title under Spain is alone looked to, as upon this motion it must be.

Appellant's rights, whatever they might be found to be, or be claimed to be, were independent of the title in the United States. Its claim is under the revenue laws of Florida, which the bill in terms says may not be construed to authorize the assessment of taxes upon land, the equitable and legal title to which belongs to the United States. By appellees' statement of their title as a matter of law, both the equitable and legal title to the land patented was in the United States up to A. D. 1895, when the patent issued.

Appellant, by its defense, makes a controversy as to whether the title passed to the United States

at the cession, but that defense is not before this Court on this motion, and if it was is a contest about facts only, the foreign law being undisputed.

Hooker *v.* Los Angeles, 188 U. S. 314; text 318; 47 L. ed. 487.

Neither Defense, nor suggested Defense may be looked to.

Of course the alleged adverse possession of the lands patented by the United States which the answer claimed had been taken and held by appellant is not before this Court on this motion to dismiss.

It is true appellees in their bill set out that appellant as a defense would claim that appellees derived their title from the King of Spain, and anticipated this defense, but these averments did not bring forward any treaty question for the reason that upon appellees' statement of the character of their title as inchoate and based upon a claim to 5,500 acres of land unsurveyed under Spain, upon the settled construction of the treaty, the United States took and held both the equitable and legal title to the particular lands patented in A. D. 1895.

Appellant had or could claim no treaty rights. The statement that appellant would claim appellees took a complete title under Spain did not make the suit one arising under the treaty.

Tennessee *v.* Union & Planters Bank, 152 U. S. 454, text 464.

Boston, etc., Mining Co. *v.* Montana Ore Co., 188 U. S. 632, text 638–639.

California Oil & Gas. Co. *v.* Miller, 96 Fed. Rep., text 21.

The resort to their answer in the brief of counsel for appellant, and also to the opinion rendered by the trial Judge, in order to establish a Federal question in the case is an admission that appellees' state-

ment of their cause of action does not show they relied upon any rights claimed under the treaty or arising under any Federal law.

That Plaintiff relies upon a land patent does not make a controversy determinable by Federal Law.

Where plaintiff relies upon a title to land under a United States patent, and there is no dispute as to construction or effect of the statute under which the patent issued, but the real controversy between the parties is whether or not the rights claimed by the defendant under State laws constitutes a valid defense to the assertion or protection of plaintiff's title, then plaintiff's rights do not arise out of a Federal law so as to confer jurisdiction in the Federal courts, even upon a direct appeal.

Where plaintiff so states his case it does not appear therefrom that the trial Court is required to interpret any Federal law, or that he contends for a construction of such law or a treaty right which the defendant may dispute, or that the effect of any Federal law is disputed.

Butler *v.* Shafer, 67 Fed. 161.
California Oil & Gas. Co. *v.* Miller, 96 Fed. 12, text 17.
Earhart *v.* Switzler, 179 Fed. 832.
Provident Savings Society *v.* Ford, 114 U. S. 635, text 642.
Shoshone Mining Company *v.* Rutter, 177 U. S. 505, text 507.
State of Iowa *v.* Chicago, etc., Ry. Co., 33 Fed., text 394.

There can be no doubt that the limitation to one appeal imposed by Section 128, Judicial Code, was intended by Congress to apply to suits in the Federal courts in which the foundation of plaintiff's right or estate is a land patent from the United States, where the right of the plaintiff as against the claims of defendant depends upon general prin-

ciples of law, even though as between plaintiff and the United States there might be a substantial dispute as to the construction of the law under which the patent issued.

Kennedy *v.* Hunt, 7 How. 593; 12 L. ed. 833.

Where title is derived from the United States it is not within the power of the plaintiff to so state his cause of action as to avoid stating that his rights "arise" under the laws of the United States in the common understanding of the word "arise."

If he purposely avoids invoking the jurisdiction of the District Court for the enforcement of a right, privilege or claim which requires that Court to construe or apply an Act of Congress, but confines his invocation of the jurisdiction of that Court as a Federal Court, to the ground that his and his opopponent's citizenship confers such jurisdiction, that makes a case in which the jurisdiction is dependent solely upon the citizenship of the parties even though the right of the plaintiff has its origin in a land patent from the United States.

The Defense does not Confer Jurisdiction.

Such is the case under Sections 128 and 241, Judicial Code, where the defendant sets up by way of defense a Federal statute upon which he proposes to rely, to defeat the estate or interest of the plaintiff.

The defense does not confer jurisdiction on the trial Court, and not on this Court upon direct appeal, unless the title or Federal right claimed is one claimed by the appellant, and not as in the case at bar, a right which appellant sets up as having accrued to appellees or to a third person.

Owens *v.* Norwood, 5 Cranch, 344, text 347-348.

Giles *v.* Little, 134 U. S. 645, text 650, and cases there cited.

If the plaintiff wishes to invoke the jurisdiction of the trial court as a Federal court wholly (solely) by reason of citizenship, it is not in the power of the defendant, when he goes to the Circuit Court of Appeals for review, to broaden the grounds of original jurisdiction, in order that he may obtain a second appeal on the merits, if the decree of the Circuit Court of Appeals be against him.

If the plaintiff by his own statement of his case has limited himself to one appeal, he has limited the defendant to one appeal, and if defendant wants this Court to review his defense, involving the validity or construction of a treaty right by him claimed, he must take his appeal direct to this Court, or if, as in the case at bar, he claims no such right, he must resort to a petition for *certiorari*.

When Title under a land patent will confer Jurisdiction on a Federal Court.

In cases brought in the Federal Courts upon a title derived from the United States evidenced by a land patent, where diversity of citizenship confers jurisdiction, to enable either party to appeal from a decree of the Circuit Court of Appeals the plaintiff in his statement of his cause of action, must have invoked the jurisdiction of the District Court for the determination of a treaty or Federal right or claim which plaintiff sets up as the foundation of his right to the title conveyed to him by the United States, the correctness of which determination depends in whole or in part upon the application or construction of a treaty, or of an act of Congress which plaintiff's statement of his case has relied upon or drawn in question.

McFadden *v.* United States, 213 U. S. 288, text 294.

Because appellees in their statement of their case claim only the usual rights of a patentee

of the United States and expressly invoked the jurisdiction of the District Court upon the gound of alienage, the reasoning of the case last cited controls this case.

Patents upon confirmed Private Claims.

It is true the patent recited it was issued upon the claim of Teresa Rodriguez, confirmed by the Act of 1828, pursuant to Section 2447 Rev. Stats., but if it be that the confirmatory act is a necessary element in appellees' claim of title set out, upon the allegations of the bill that the United States took at the cession both the equitable and legal title to the land patented, the construction of the act is in no way questioned.

The decree rendered (if looked to) was in no way affected by the statute, but rested wholly upon the nature of the title confirmed by the act.

Cook County *v.* Calumet & Chicago Land Co., 138 U. S. 635, text 651.

Where the controversy is merely as to the rights (which the plaintiff and defendant have severally) acquired under a land patent from the United States no Federal question exists.

Romie *v.* Casanova, 91 U. S. 379.

Estate of Appellees' Ancestor as set out in their Bill not a taxable interest.

In the case at bar appellees in their statement of their case went fully into the history of the title in the United States of the lands patented to them in A. D. 1895, and set out and claimed that until the issuance of the patent their inchoate claim to 5,500 acres of the public domain was being administered in the Land Department, and that their estate in

the lands patented was not a taxable interest because of its nature under the laws of Spain, and under general law (the Record, pp. 2 and 3, pp. 8 and 9).

These allegations of the bill are the foundation of the contention in the brief of counsel for appellant that it may have a second appeal upon the merits, although the relief prayed by appellees is grantable upon general principles of law, and there is no dispute as to the effect of the statute under which the lands were patented to appellees.

What the Act of 1828 Confirmed.

There is no merit in the contention of appellant's counsel for the reason that if the Act of May 23, 1828, confirmed the grant to Marcos by relation from the date of the act, as counsel in their answer assert as a defense, yet appellees by their own statement of their claim (their estate in the land patented), admit and directly state in their bill that the title (both the equitable and legal title) remained in the United States, until the patent issued, because appellees' rights under Spain were inchoate; that at the cession they held a mere land float to be located upon the public domain of the United States, through the Land Department. Such is the legal effect of the allegations of the bill.

United States *v.* King, 3 How. 778, text 787).

That such is appellees' case as made by their bill upon the facts stated in legal and logical form is admitted by the statement in the brief of counsel for appellant on the motion to dismiss found on pages 26 and 27, which reads as follows: "This decision (the decree of the District Court) is based upon the contention of appellees that the grant was an inchoate title, and was not confirmed as a full and perfect title by Act of 1828, and that a further survey and confirmation of the survey and a patent

was necessary to vest title and right of possession in the appellees and those under whom they claim."

It is there incorrectly asserted that "These are rights claimed under the treaty", and further incorrectly stated that they "present for decision in this case Federal questions which are also subject to review in this Honorable Court".

No Controversy as to the Acts of Congress.

If appellees claimed rights under the laws of the United States, there was no controversy as to the construction or effect of such laws.

On the facts stated in form required by good pleading, appellees were only the ordinary holders of title under a land patent from the United States, appellant a holder of a claim of title from an independent sovereign, and the controversy between the parties was whether, while the United States was administering appellees' claim of a right to 5,500 acres of the public domain (on Long Lake, wherever that might be found to be), under a concession from the predecessor in title of the United States, which was admitted to carry no particular land, appellant could get a legal title in the same land under the revenue laws of Florida.

The tax deed conveyed a legal title, or it conveyed nothing. The bill alleged it failed to convey anything.

Taxable character of the land depended wholly upon the Nature of the Title under Spain.

As stated on page 9 of the brief of counsel for appellant:

"The purposes of the allegations of the bill * * * are to present the case attempted to be stated by the appellees, to wit: that the sales for non-payment of taxes for the years 1845 to 1852, inclusive,

were void because * * * the lands were still a part of the domain of the United States, and the United States was in possession of the same."

Thus appellant admits that the taxable character of the land was the foundation of the case made by the bill.

Whether the tax deed under which appellant claims was valid or invalid to invest title to the lands rested upon a determination of the issue of whether the lands were taxable, and although appellees hold a patent issued under Section 2447 Revised Statutes in A. D. 1895, this issue did not involve a controversy as to a right which depended upon the construction of any Federal statute, treaty or decision of the Land Department, but wholly depended upon the character of the Spanish concession to Mexico.

The right to have the land untaxed from A. D. 1823 to A. D. 1895 was a right in the United States and appellees, not in appellant, nor those under whom it claimed. This right depended wholly upon the fact of whether the lands were of the class that by settled international law became the property of the United States upon the cession of territory by treaty, or had been set off to appellees' ancestors as private property before the cession.

Appellees, in their statement of this case, alleged that the lands patented were ceded by the King to the United States and became a part of the public domain, and were not private property until the patent issued.

United States *v.* King, 7 How. 833, text 847.

Appellant did not derive title either from Spain nor the United States.

Appellees alleged they derived title from the United States upon an incipient right granted by Spain, which did not become private property until the patent issued in A. D. 1895; that what the United States confirmed by the treaty and

by the Act of 1828 was their right to have 5,500 acres of land out of the territory ceded to the United States by the King as his property, which by the cession became the public domain of the United States, and that thereafter the particular lands patented were located by the United States and set off to appellees out of the lands the King ceded under the 2nd article of the treaty.

Upon this statement the Court was required to take judicial notice that the lands patented were other than the lands conceded by Spain to Marcos, which alone meets the contentions found on pages 8 and 9 of the brief of counsel that the decision in this case depended upon the treaty—the Act of 1828—and the decisions of the Land Department.

As was said in Shulthis *v.* McDougal, 225 U. S. text 569, "A suit to enforce a right which takes its origin in the laws of the United States does not necessarily arise under those laws, unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends."

Counsel for appellant in their brief have failed to point out any Federal statute the construction or effect of which was relied upon by appellees in their statement of their case, as controlling the result of the controversy between the parties.

The legal effect of the statements of the bill made the possession of the United States exclusive apart from the force and effect of the Act of March 3, 1807, as in this brief we later show.

On page 10 of the brief of counsel for appellant it is said: "Appellees insist that this grant was not subject to taxation on the alleged ground that the grant of this land from Spain to Marcos was an inchoate, or incomplete grant, and that by the true construction of the terms of the treaty the grant did not become a complete and perfect title in Marcos."

What the bill alleged was that independent of the treaty the character of the concession was such that

it conveyed no title to the lands patented; that the grant on its face was but a first concession, the lands were never segregated from the King's domain, and before the Royal title issued Spain ceded these lands to the United States, which by the 8th Article of the treaty stood pledged to confirm Spain's concession (the record, pages 2 and 3). Counsel for appellant so state the case upon page 3 of their brief, first paragraph.

No construction of the treaty was required, but, if it were, its construction has been settled for more than half a century, and could not be the basis for invoking the jurisdiction of the District Court.

State of Kansas *v.* Bradley, 26 Fed. Rep. 289, text 290.

McGilvra *v.* Ross, 215 U. S. 70, 54 L. ed., 95.

Hussman *v.* Durham, 165 U. S. 144, text 147, and cases there cited.

The application of the State revenue law depended upon the character of the estate held by appellees' ancestor at the change of flags, whether that was such an inchoate claim as the bill alleged, or a sufficiently complete estate in the particular lands patented as to be subject to taxation.

Controversy determined by General Law.

Upon the allegations of the bill no treaty or Federal right or claim could be the basis for invoking the jurisdiction of the District Court because the bill alleged that the particular lands patented in 1895 had not been segregated from the King's domain before the cession, nor from the public domain of the United States until June, 1894, and upon those allegations by general principles of international law

the United States held both the equitable and legal title to the lands patented.

United States *v.* Mitchell, 9 Pet. 711.
United States *v.* Forbes, 15 Pet. 173
Beard *v.* Federy, 3 Wall. 491.
United States *v.* King, 3 How. 773.
United States *v.* Lawton, 5 How. 11.
Menard *v.* Massey, 8 How. 294.
McGuire *v.* Tyler, 8 Wall. 650.
D'Autrive *v.* United States, 101 U. S. 700.

The controversy between the parties was as to what were the rights granted by Spain. Whatever those rights were, it was admitted they stood confirmed by the United States. Appellees in their bill alleged that the grant containing no boundaries there was confirmed their right to have set apart to them by the United States 5,500 acres out of the territories ceded by the King.

McDonough *v.* Millandon, 3 How. text 706.

Upon the defense set up by the answer (if that could be looked to) those rights to the lands patented were confirmed by the general principles of international law, being property not ceded under the 2nd article of the treaty.

Whether or not the lands were taxable when sold for taxes in A.D. 1852 or when assessed and sold for taxes in A.D. 1872, was also determinable upon general principles of law, whatever might be found to be the rights held by appellees' ancestor under Spain, and hence no Federal or treaty question to confer jurisdiction could properly be submitted to the trial Court for determination upon the issue raised by the facts pleaded in logical form.

Crystal Springs Land & Water Co. *v.* City of Los Angeles, 82 Fed. Rep. 114, text 117.

Railway Co. *v.* Prescott, 16 Wall. 603, text 608.
Gibson *v.* Choteau, 13 Wall. 92.
Colorado Company *v.* Commissioners, 95 U. S. 259, text 265.
Northern Pacific Co. *v.* Traill County, 115 U. S. 600.
Wisconsin Central Ry. Co. *v.* Price County, 133 U. S. 496, text 504.

In Tucker *v.* Ferguson, 22 Wall. 527, text 572, Mr. Justice Swayne, speaking for this court of a tax levied by the State of Michigan, said: "Upon general principles she (Michigan) could not tax the land while the title remained in the United States."

To the same effect is

People *ex rel.* McCrea *v.* United States of America, 93 Ill. 30, 34 Am. Reps., text 158–159.
Van Brocklin *v.* Tennessee, 117 U. S. 151, 29 L. ed. 845.
Forbes *v.* Gracey, 94 U. S. (Otto) 762, 24 L. ed. 213.

In the case last cited Mr. Justice Miller said:

"If the tax of the State of Nevada is in point of fact levied upon this property right of the United States we are bound by all our previous decisions and by sound principles to hold that it is void."

That the facts by which the determination of the issue in the case at bar was reached were of Federal origin did not make the questions for decision of Federal or treaty character.

Miller's Executors *v.* Swann, 150 U. S. 132, text 136.
King *v.* Lawson, 84 Fed. 209, text 211.

Appellees Right as stated merely that of holder of a land float.

Standing alone, the allegation found in the 18th paragraph of the bill, page 10 of the record (stated as one of the grounds of illegality of the tax sale had in 1852) that at that date "the 4.438.68/100 acres thereof confirmed to Teresa Rodriguez as (was) an unsegregated part thereof not subject to taxation", which counsel in their brief on page 5, state as a Federal question sought to be determined by appellees, might be held to be color of support for appellant's contention that there existed a controversy over the construction of the Act of March 3, 1828, but upon the whole statement of appellees' case made by the bill it is clear that this statement that the Act of 1828 confirmed to appellees' ancestor an unsegregated 4,438.68 acres is an immaterial averment, since the legal conclusion from all the averments of the bill is that even if the Act of 1828 confirmed the whole of the concession to Marcos, the right so confirmed was to have 5,500 acres to be thereafter located by the United States out of the public domain, which right was a mere land float and not a right of property in the lands afterward patented by the United States in 1895.

It was admitted and stated in the bill that in 1894, the Secretary of the Interior construed the Act of 1828 as having confirmed the 5,500 acres conceded by Spain to Marcos. So that the statements of the bill as to *the prior* holding of the Land Department are material only to show why the issuance of a patent was so long delayed.

Contentions of Counsel for appellant as to the grounds of Jurisdiction in the trial Court.

Counsel in their brief on the motion to dismiss contend "the relief prayed" in appellees' bill, required the Court's construction of the treaty and

laws of the United States by reason of the statements in paragraphs 1–13 to 19 inclusive, 24–25 and 32–36 inclusive, and in the argument found on pages 10 to 26 of this brief points out as the "Federal questions involved in this suit" the following:

(*a*) The construction and application of the treaty.

(*b*) The determination of the nature of the grant to Marcos, and the construction and effect of the acts of Congress providing for examination and confirmation of Spanish Grants in Florida.

(*c*) The effect of the Act of May 28, 1828.

(*d*) The ruling of the Land Department that the grant to Marcos was not a confirmed grant, and that title remained in the United States; that the United States refused to recognize a private right to the land from 1831 to 1894.

(*e*) That appellees allege the survey as a private claim was not approved until June, 1894, while appellant claims a survey of the land as a private claim was approved October 19, 1851.

(*f*) That the theory of the bill is that a patent was necessary to transfer title to the lands out of the United States, and until this was done the lands were not taxable.

(*g*) Until the patent issued the right of possession was in the United States and the lands not taxable.

(*h*) Under the Act of 1807 appellees were excluded from possession.

The Several Contentions Answered.

We deny these "Federal questions" were "involved in the suit," or were relied upon in and by appellees' statement of their cause of action, and make answer thereto:

(*a*)

No Treaty Question.

The construction of the treaty has been settled for more than sixty years. If the application of the treaty was required it was upon a contest of the facts only, the treaty being undisputed, and thus the cause is not one arising under a treaty.

(*b*)

Issue determined by Nature of Title under Spain.

The nature of the grant to Marcos was made by the bill, the controlling issue in the case. That was a question of Spanish law. If on this motion to dismiss we could look at the issue made by the defense it would be found there was no controversy as to the construction or effect of the confirmatory act of Congress.

For sixty years after the passage of the act the Land Department held the lands to be public lands. In 1894 the act of 1828 was construed to confirm the King's grant to Marcos. These were facts admitted.

If the defense set up that this confirmation related back to A. D. 1831 could be considered on this motion, or if it follows as a matter of law that such confirmation relates back, yet if as alleged in the bill the land conceded had never been segregated by a survey under Spain, and the lands patented were not the 5,500 acres granted, because the lands granted could not be located on the ground, the estate or interest taken and held by Marcos which was confirmed by the Act of Congress, was not of such a character as to be subject to taxation while the lands were in process of administration by the United States.

Gauthier *v.* Morrison, 232 U. S. 452, text 465.

Hussman *v.* Durham, 165 U. S. text 147.

In their bill appellees did not ask a decree based upon a construction of the acts of Congress for the confirmation of a legal or full equitable title in Marcos.

The legal effect of the bill was an admission that even if the act be construed to have confirmed this concession by relation in A. D. 1828, yet such confirmation was only of appellees' Spanish title or claim, which was a mere land float "in its nature not differing from the holder of a land warrant in the American States."

McDonough *v.* Millaudon, 3 How., text 706.

United States *v.* Forbes, 15 Peters, text 182–184.

Michigan Land & Lumber Co. *v.* Rust, 168 U. S. 589, text 593.

Upon the interest claimed under Spain as set up in the bill the patent from the United States must as matter of law be held to be the basis of the rights sought to be enforced against appellant, and conclusive as to the claims of appellant.

Where authority to issue a patent for lands depends upon the existence of particular facts the determination of the Land Department is conclusive.

St. Louis Smelting Co. *v.* Kemp, 104 U. S. 636, text 657, 26 L. ed. 878.

(*c*)

Act of 1828 confirmed only the Estate held under Spain.

The effect of the Act of 1828 the bill alleged was to confirm the inchoate interest or claim held by Marcos under Spain to 5,500 acres to be located out of the public domain of the United States.

The act came in question only incidentally.

Admitting for the purpose of argument that Marcos' interest or claim was presently confirmed

by the act, his interest in the lands patented on the facts alleged was not a taxable estate in these particular lands, and never became such until the patent issued, upon the survey approved as in the patent recited.

The Circuit Court of Appeals found as a fact that the lands were not segregated from the public domain until the issuance of the patent, and applied to such finding of fact the general principle of law that lands belonging to a sovereign are not taxable.

(*d*)

Ruling of Land Department not in Controversy.

The allegations of the bill as to the ruling of the Land Department that title remained in the United States and as to its refusal to recognize the grant from A. D. 1831 to A. D. 1894 were merely of facts in the history of the title held by the United States before its patent issued.

These allegations of fact warrant a decree upon the general principle of law that land, the equitable and legal title to which is in the United, States is not taxable by the States, regardless of whether the Act of 1828 was construed to confirm the Spanish concession of 5,500 acres or only 4,438 acres thereof as continued to be held to be the law during the period the Land Department was administering the claim.

They did not call for a decree based upon or arising out of or determinable by any law of the United States because the United States are a Sovereign nation.

The facts only are contested, the law is undisputed. This does not make a case arising under the laws of the United States.

(e)

Statement of the Bill that the Survey was not approved until 1894, Controlling on this motion.

Upon this motion to dismiss the allegations of the bill as to when the survey was made, are controlling in the determination of whether appellees invoked the jurisdiction of the District Court to make its decree upon the foundation or with the support of an act of Congress. Those allegations support appellees' contention that appellees held no title to the particular lands described in their patent prior to 1895, and that the patent and not the grant transferred their title out of the Sovereign Owner. Appellees went further in their bill and alleged that until the approval in A. D. 1894 of Williams' survey, the lands were surveyed as public lands according to the plats of the public surveys; page 8 of the record.

(f)

Upon Statements of the Bill a Patent was necessary.

Appellant seeks to present upon this motion its contentions made in its answer as to the "theory of the bill" that a patent from the United States was necessary to transfer a title subject to taxation.

On the allegations of the bill that at the cession the United States took and thereafter held the title to the lands until the patent conveyed them to appellees, this suit does not arise under the laws of the United States, because, with respect to the tax deeds, no construction of the facts alleged to put in the record the history and source of appellees' title will make the decree depend on a law of the United States.

It comes back to the general principles of law governing taxation. Ownership of the lands by virtue

of a patent from the United States was set up, and the source of title in the United States was not a question for the Court's determination on the plaintiff's case.

(*g*)

Holders of Land Floats not entitled to possession of United States Lands.

The allegations of the bill that Marcos' grant was a mere floating claim until the land was segregated and patented by the United States does not make a suit which depends on a law of Congress. The defense which appellant set up to invoke the aid to a third party of treaty and Federal laws, upon its contention that under the laws of Spain the grant was of a higher character than the bill alleged, cannot be considered on this motion, if it were a substantial defense, which we deny.

(*h*)

Act of 1807 not involved.

The reference to the act of 1807 is contained in the 15th paragraph of the bill (p. 8 of the Record) and appellees there allege the duty of the United States to survey the grant confirmed to their ancestor and recite as an existing law the act of 1807, making it unlawful for their ancestor to take possession of the lands claimed by them as long as their claim was not recognized or confirmed by the United States.

Considering the whole bill it is apparent that no construction of this act controlled the decree. If appellees' title was a mere floating right to 5,500 acres of land as the bill alleged, then the act could

not apply and the matter in controversy, the taxability of the lands, did not arise under this statute. The statute came in question only incidentally to the real issue of whether or not the title which the bill alleged the United States held in 1851 was or was not a taxable estate. The defense which cannot be considered on this motion was that the title stood in the ancestors of appellees, and was property subject to the State revenue law.

The averments of the bill, however, placed the title to the land in the United States, and as incidental to that title said that so long as that title remained in the United States and was claimed by the United States, the Act of 1807 gave the United States exclusive possession of the lands. This possession follows as a legal principle without the statute. Appellees' want of a right of possession and right to bring any action before the issuance of the patent was by the bill alleged to have resulted from the nature of their inchoate title to the lands patented, and not as the brief of counsel for appellant (p. 9) says from the effect of a Federal law.

Burgess *v.* Grey, 16 How. 62, 14 L. ed. 845.

The bill further alleged absence from the territory of appellees' ancestors from 1828 until the filing of the bill, so the Act of 1807 was not the basis of the suit in any construction of it.

Further that act which covers all the lands in the Northwestern Territory, the Louisiana Purchase and the Floridas cannot be the basis of jurisdiction in a case where plaintiff claims title under a patent from the United States, without extending the jurisdiction of this Court to all the public lands patented, under whatever law issued.

Appellant in the brief of its counsel having failed to point out where in appellees' statement of their cause

of action they did assert in legal and logical form the existence of a real controversy in itself constituting an independent ground of jurisdiction, the contenton of appellees supported by the distinct allegation of their bill that they invoked the District Court's jurisdiction solely because of their alienage should be sustained and this appeal dismissed for want of jurisdiction.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES.
Solicitors and Counsel for Appellees.

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FILED
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In the Supreme Court of the United States

OCTOBER TERM, 1914

No. 135

WILSON CYPRESS COMPANY
Appellant

vs.

ENRIQUE DEL POZO Y MARCOS, *et al*,
Appellees

Reply Brief for Appellant on Final Hearing

JOHN C. COOPER,
Solicitor for Appellant.

THE DREW PRESS, JACKSONVILLE 291874

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In the Supreme Court of the United States

WILSON CYPRESS COMPANY, *Appellant*,		No. 135,
vs.		October Term,
ENRIQUE DEL POZO Y MARCOS *et al*, *Appellees*.		1914.

REPLY BRIEF FOR APPELLANT ON FINAL HEARING.

STATEMENT.

In the brief heretofore filed in this cause for appellant on motion of appellees to dismiss the case for want of jurisdiction and on their motion to affirm and also in the brief for appellant on final hearing, the solicitor for appellant has fully discussed the propositions of law and fact involved in this case, and that discussion is in his opinion a sufficient reply to the brief and argument for appellees on final hearing, but, as to a few of the contentions of appellees the appellant desires to submit the following in addition to matters heretofore discussed in appellant's other briefs:

EVIDENCE AS TO PEDIGREE.

The solicitors for appellees contend that the complainants in this suit, the appellees herein, were recognized by the Land Department and represented before that department by the firm of Shelley & Martin, and refers to powers of attorney from the heirs of Teresa Rodriguez

to one Sariol and those used by Shelley & Martin before the Land Department. An examination of the evidence in this case will show that Sariol never had any power of attorney from the complainants or any of them and never represented the complainants or any of them or had any knowledge of them until he went to the Island of Cuba in March 1908 to assist Mr. J. H. Jones, one of the solicitors for appellees in getting powers and contracts. See page 141 of record. Prior to that date he had no connection with investigating who were the heirs of Teresa Rodriguez since 1889. He first made his inquiries as to the heirs of Teresa Rodriguez in 1885 (see page 145 of record) and he gives the names of the persons claiming to be descendants of Teresa Rodriguez, whom he knew personally. See page 146 of record. He states further that none of the persons he named as claiming to be heirs of Theresa Rodriguez, whom he personally knew were living,—that they are all dead. See page 148 of record. He further states that he never knew of any of the complainants (the persons now claiming to be said heirs) before March 1908 and that he had never met them before, (see page 149 of record), and that he looked them up himself (see page 150 of record). He further states the parties from whom he claimed to have received powers of attorney are all dead. (See page 150 of record). They are therefore not the complainants named in this cause. It is clear, therefore, that the alleged powers of attorney from persons claiming to be heirs of Theresa Rodriguez to Sariol and those used by Shelley & Martin referred to by appellees in their brief were not executed by any of the complainants in this cause, to-wit, the appellees, and therefore such powers of attorney, if they ever existed, would in no manner establish the pedigree of the complainants.

If the complainants propose to establish their pedigree and kinship with Teresa Rodriguez by the powers of attorney referred to as being on file in the Land Office, they should produce and file in this cause certified copies of such powers of attorney, and not having filed same they

are not entitled to refer to them as proof of any facts in their behalf. A careful examination of the evidence of Sariol will clearly establish that he had no power of attorney from these appellees and had no knowledge of them until 1908.

The alleged powers of attorney under which Shelley & Martin are claimed by solicitors for appellees in their brief to have acted before the Land Department were never filed, nor were copies of same ever filed in evidence in this cause, and are not before the court. The testimony of J. H. Martin, one of the firm of Shelley & Martin, established that the firm of Shelley & Martin never had any power of attorney from any person purporting to be an heir of Teresa Rodriguez to represent them before the Land Department. He was asked on cross examination to state the names of the person or persons who employed the firm of Shelley & Martin, and whether the employment was in writing, correspondence, or oral, and to attach the writings to his answer. He states in reply to this cross interrogatory that his firm was employed by Colonel Lewis Lay, and cannot state whether there were any writings and does not attach any. He states his firm was prosecuting the claim under a power of attorney executed to Colonel Lewis Lay but does not state who executed the power of attorney. He does not state that any of the present complainants in this suit executed such power of attorney. He refers to the power of attorney as being on file in the Land Department. See pages 828 and 829 of the record. No copy of the power of attorney was filed in evidence by appellees in this suit. The entire authority of Shelley & Martin to act in this matter is clearly whatever was contained in the power of attorney by some persons unknown to Colonel Lewis Lay. There is therefore no evidence in this record that the Land Department ever recognized the appellees as the heirs at law of Teresa Rodriguez, and they cannot establish pedigrees by reference to powers of attorney given by someone to Colonel Lewis Lay and filed in the Land Department as proof of the pedigree of appellees

as heirs at law of Teresa Rodriguez. There is nothing in the deposition of the witness Martin to show that he knew the present complainants or any of them or had any dealings with the present complainants or any of them. He was asked on his direct examination whether he was employed by complainants herein or some of them, but on his cross examination it is plain that neither he nor the firm of Shelley & Martin ever had any transactions with the appellees or any authority from the appellees to represent them, but their entire connection with this matter was with one Colonel Lewis Lay, and that this connection commenced in 1893, whereas at the time that Sariol revisited Cuba in 1908 to look up these heirs the persons whom he had formerly known as such heirs were all dead. It would further appear from the evidence of the witness Sariol that he states that he knew personally Felix Genaro y Marcos. See page 146 of the record, and on page 148 of the record he states that all of the persons whom he personally knew as claiming to be the heirs of Teresa Rodriguez are dead. He further states, on page 150 of the record, that the parties from whom he claims to have received powers of attorney as such heirs are dead. There is no proof in this record that Felix Genaro y Marcos named in the bill in this cause as one of the complainants is living or was living at the time this bill was filed or the decree was made but according to the evidence of Sariol he was dead prior to the making of the decree in this cause. According to the evidence of pedigree introduced by the appellees Christina del Pozo y Marcos, the mother of Ernesto Nunez del Pozo, named as one of the complainants in the bill and in the decree died on the 30th of March, 1889. It is therefore apparent that any power of attorney that might have been made by her became of no force and effect after that date. See page 1000 of the record. And that Genaro Garcia Marcos, who is alleged to be the father of the complainant, Lorenzo Garcia y Pechardo, died on the 20th of November, 1886, and therefore any power of attorney executed by him was of no force after that date, and that Augustine

Garcia was buried April 26th, 1836. See translation page 1024 of record. If the date is correct, the Augustin Garcia referred to in said burial certificate dated April 26th, 1836, was not the father of Ricardo Garcia named as one of the complainants in the bill of complaint and mentioned in the Table of Descents, brief of appellees, page 120, and in that respect there has been no proof of pedigree of the said appellee Ricardo Garcia. It is further apparent from the said birth certificate of the complainant Ricardo Garcia, dated April 20th, 1877, that he was not of lawful age until April 20th, 1898, and could not have executed any power of attorney prior to that date. There is no evidence that the present complainants ever executed any power of attorney to any person which was filed in the Land Department or that they were ever recognized by the Land Department as the heirs of Teresa Rodriguez, and it is apparent from the testimony of Sariol and the burial certificates filed by complainants themselves in this case that the powers of attorney, if any, executed to Lewis Lay referred to in the deposition of Martin had become of no force and effect by the death of the claimants prior to the issue of the alleged patent in this case in 1895. An examination of the deposition of Martin, pages 828, 829 of the record, will establish that he does not name one of the complainants as the persons who employed his firm or whom his firm represented, and that in fact his firm represented Lewis Lay whom the witness Martin claims had powers of attorney of persons claiming to be the heirs at law of Teresa Rodriguez, but the names of the persons who executed said powers of attorney are not given by the said Martin, nor are the said powers of attorney or copies of them filed in the record.

NO PRIMA FACIE OR OTHER LEGAL PROOF OF PEDIGREE ESTABLISHED BY APPELLEES.

It is apparent from the reference to the record made hereinabove that all of the argument by solicitors for appellee about prima facie proof only being required of

pedigree and prima facie proof having been made has no foundation whatever. It has been shown that these complainants were never recognized by the Land Department of the United States as the heirs at law of Teresa Rodriguez, and there is no proof whatever that Martin represented them or either of them. Some reference is made in the brief of solicitors for appellees to a former suit instituted by the same complainants as appellees against defendant, and that that in some way establishes the proof of pedigree. Appellees' solicitors do not indicate what is meant in their brief by a former suit, but the only reference to any former suit brought by complainants is found in Paragraph 35 of the bill of complaint on page 20. In the defendant's answer to the bill, found on page 54 of the record, it is alleged that such a suit was brought against this appellant on the 24th of June, 1902, more than seven years after the order had been made by the Land Department for the issuing of the patent to the heirs of Rodriguez and within two days of seven years after the issuing of the patent; that this bill was dismissed on the 4th of April, 1904, and the present bill was brought on the first of May, 1907, three years after the first suit and twelve years after the issuing of the patent, and that the bill was dismissed because counsel in that case were not furnished with evidence by the complainants to prosecute that suit. See pages 54 and 55 of the record, also pages 1031 to 1034 inclusive. This record not only shows gross laches on the part of the complainants, whoever they were in that bill, but if it has any bearing whatever upon the question of proof of the right of complainants to maintain a bill it would indicate that they were either unable to furnish such proof to their counsel or failed so to do.

NO TABLE OF DESCENT OF COMPLAINANTS NAMED IN THE DECREE IS ESTABLISHED IN THE EVIDENCE.

On page 120 of the brief of appellees on the merits is what purports to be a Table of Descent of *eight* complain-

ants named in the decree. An examination of this alleged Table will disclose that even if the table were complete and established by legal evidence, it only covers the descent of *four* of the alleged complainants named in the decree, to-wit, Felix Genaro Marcos, Ernesto Nunez del Pozo, Lorenzo Garcia y Pechardo, Ricardo Garcia Ochandarena. Of the eight complainants, the following four complainants named in the said final decree are only referred to in this socalled Table of Descent stated in the brief of appellees on page 120, to-wit; Esteban Garcia y Pechardo, Luis Garcia y Pechardo, Gertrudis Garcia y Ochandarena and Maria Teresa y Garcia Ochandarena, but their pedigree is not traced in said Table of Descent. As to Felix Genaro Marcos, as hereinbefore stated, it would appear from the testimony of the witness Sariol that the said Felix Genaro Marcos was dead at the time this decree was entered, but, even if living, his pedigree is not established by any proper or legal proof.

The marriage of Miguel Marcos, to whom the original Grant from Spain was made, and Teresa Rodriguez, to whom and to her children, the Grant was confirmed, is established by proof from the Marriage Registry in St. Augustine, Florida, together with the sworn testimony of the priest in charge of all said records as custodian thereof.

The birth of their son, Miguel Joseph Marcos, is established in the same way.

The death of the said Teresa Rodriguez is attempted to be proven by the testimony of the witness Sanchez, pages 492 and 493 of the record, where he testifies that a certain certificate which he did not purport to have written himself was read over by him while a person whom he calls the "Secretary" in charge of all records in that church read from a book, and from this testimony Sanchez states the said paper produced by him to be a correct copy of this registry. There is no evidence that the party who read from the records was in fact the legal custodian of the records, his name is not given, he was not examined on deposition nor the book produced before an officer

authorized to so examine the alleged custodian. The testimony shows that Sanchez had no knowledge of this officer or of the record but simply found a person at this church who read over this record to Sanchez while he, Sanchez, read the paper which he now produced as a copy of the record. There are certain recitals in this certificate of the parentage of this person but such recitals are not evidence of such facts, and the name of the deceased does not appear to be Teresa Rodriguez.

The marriage of the said Miguel Josef Marcos to Josefa Maria Cleofas Diaz is attempted to be proven by the witness Sanchez, see pages 495, 496 of the record, and he states in general terms that he verified it with some record in the church and that he compared it in the same way as is stated in reference to the last exhibit mentioned above, and the same objections apply to this mode of attempting to establish the contents of this record, and we refer to our original brief on the merits for the legal objections to this attempted method of proof of each of these certificates.

It must also be borne in mind that the certificates do not purport to be certified by the then custodian. The identification of these several records and of the custodians of same by Sanchez is not from any previous knowledge of same by him but from his having on the occasion of his comparing the records gone to the church and found a person in charge of same and a book which he, Sanchez, is informed was the record. These are all hearsay statements. The only legal method of making this proof is by examining under oath and by depositions the custodian of the record with the record before him and produced at the hearing.

As to the burial certificate of Miguel Josef Marcos the same method of proof by Sanchez is attempted to be made. The burial certificate of Miguel Josef Marcos, found on page 989 of the record shows that the copy of such certificate was originally made November 25th, 1885, and certified to by the Notarial College December 1st, 1886. It thus appears that this paper Sanchez was testify-

ing in reference to was not made by him but was made about twenty-five years before by someone else, and the same objections as to the method of proving the record apply to this certificate as to the others above mentioned. His testimony was taken May 5th, 1910, and he states in his testimony that he had been able to read and write the Spanish language for about two years before that time and that he had lived in Cuba five years before his examination, with the exception of four months in 1909, so that while he does not state distinctly the time when he claims to have made these comparisons, they must have been made within two years before his examination. The recitals in the certificate are not evidence of the identification of the person referred to therein.

The birth certificate of Felix Genaro Marcos is attempted to be proven by the witness Sanchez by an alleged comparison with the paper claimed to be the record. The custodian is not named or examined nor any legal proof made of the existence of the record. The only proof of parentage of the said Felix Genaro Marcos is by the said recitals in his birth certificate. The copy purports to be certified the 27th of November, 1886. The comparison of the record by the said Sanchez must have occurred in 1908 or 1909. The parentage of Felix Genaro Marcos is attempted to be proven by recitals in this birth certificate. The same objections made to the other certificates apply to this one.

The birth certificate of Dorotea Marcos is established by the proof from the records at St. Augustine, Florida, page 209 of the records, Exhibits 15 and 16.

The marriage certificate of Dorotea Marcos to Nicolos Jose del Pozo is attempted to be established by the testimony of Sanchez. Pages 500 and 501 of the record. See also Exhibit 5, pages 992, 994 of the record. The testimony of Sanchez is to the same effect as to the other certificates above discussed. The certificate purports to be certified as a copy May 5th 1884, and there is no acknowledgment before the Notarial College of this certificate. The proof of her identity is attempted to be established

by the recitals in the certificate by therein stating her parentage. The burial certificate of Dorotea Marcos is attempted to be proven by Sanchez, pages 505, 507 of the record, in the same manner as the other certificates, as shown by Exhibit 8, page 999, the copy being dated May 14th, 1909, and recites her burial on March 6th, 1879. The same mode of proof as to this certificate was attempted to be made by appellees as in reference to the other certificates, and the same legal objections apply to it except that this certificate appears to have been made May 14th, 1909, which from the testimony of Sanchez apparently is about the time that he made the comparison referred to in his testimony.

The birth certificate of Christina del Pozo y Marcos is referred to on pages 994, 996 of the record, and referred to in the testimony of Sanchez, pages 502, 503 of the record. The certificate as to its being a copy is dated December 2nd 1886, nearly twenty-three years prior to the alleged comparison by Sanchez with what he claims to be the records, and the same method of proof by Sanchez is undertaken to be made as to this but he does not give the name of any custodian of the record with whom he compared it or who are in charge of the record.

Marriage certificate of Christina del Pozo y Marcos to Alejandro Jose Marcos Nunez Willavicencio is attempted to be established by the testimony of Sanchez, pages 503 and 505 of the record, and is Exhibit No. 7, pages 996 and 998. This certificate recites her parentage and states the marriage as taking place October 25th, 1862. The copy is certified as a copy March 15th, 1909. The same method of proof by Sanchez is attempted to be made of this record and the same objections apply to it.

The burial certificate of Christina del Pozo y Marcos, is referred to in testimony of Sanchez, pages 507, 509, Exhibit No. 9, pages 999 and 1002 of the record. This paper purports to be a copy of the certificate of facts purported to be made by a person calling himself a Municipal Judge by Substitution in Northern District of Guadalupe in Cuba, and states the death of Dona

Christina del Pozo y Marcos de Nunez on the 30th of March, 1889, and recites her parentage and also that she was married at the time of her death to Don Alejandro Nunez de Villavicencio Alvarez. It further recites that she left a will and also recited that she left four children Alejandro Arturo, Alfred, Ernesto and Amelia. This is not a burial certificate by the priest but a municipal certificate by a judge and copy made May 17th, 1909. The same objections apply to this proof and certificate as to those previously referred to.

Baptismal certificate of Ernesto Nunez del Pozo, referred to on page 509 of the record in the testimony of Sanchez is found on page 1003 of the record, being Exhibit No. 10. The date of birth stated in the certificate is February 20th, 1869. Recites his parentage and names of grandparents. Date of copy of certificate is May 13th, 1909, and is not certified before Notarial College.

Maria Gracia Marcos. Her baptismal certificate is proven by the records of St. Augustine, pages 210, 211, Exhibit No. 17, pages 1020 and 1021. This proof is made by examination of the custodian of the record, Father Maurice P. Foley, with the record before him.

Marriage certificate of Maria Gracia Marcos to Augustin Garcia, referred to in the testimony of Sanchez, pages 511, 512 of the record, Exhibit No. 11, pages 1003 and 1004 and 1037. This certificate recites the parentage of Maria Gracia Marcos and the marriage is recited as being November 17th, 1825, copy being dated the 21st of May, 1909, by the priest in charge of the church. There does not appear to be any notarial acknowledgment.

In the brief of appellees the burial certificate of Maria Gracia Marcos is referred to as shown by pages 516 and 517 of the record. There is nothing on either of these pages in reference to the death or burial of Maria Gracia Marcos and there does not appear in the record any certificate of her death or burial or of who her living children were at the time of her death. There is therefore no proof in this record whether the said Maria Gracia Marcos is still living or is dead, or when she died, or whether

she died testate or intestate, and who were her heirs at law.

Baptismal certificate of Genaro Garcia y Marcos is referred to on pages 512, 513 and 514 of record in testimony of Sanchez, and which testimony is subject to the same objections as stated to the other certificates attempted to be proven by Sanchez. This certificate is Exhibit No. 12, page 1007, 1008 of the record. Copy is dated the 21st of May, 1909. There is no verification before a Notary or College of Notaries of this certificate. The certificate undertakes to identify the person referred to by a recital as to who were his parents and grandparents, and the name in the certificate is Genaro Maria and date of birth the 19th of September, 1826. It is recited in the certificate that he is the son of Dona Maria de Gracia Marcos and Don Augustin Marcos.

The marriage certificate of Genaro Marcos Garcia to Adelo Pechardo is referred to on pages 514, 516 of the record in the testimony of Sanchez, and is Exhibit No. 13 on page 1011 of the record. This certificate is a certificate of the marriage of Genaro Maria Garcia to Adela Pichard on 8th of September 1845, and the copy is dated the 19th of July, 1909, and purports to be certified by the priest, and there is no acknowledgment before any Notary or Notarial College to this certificate, and the said Genaro Maria Garcia is attempted to be identified by recitals in the certificates of the names of his parents.

The burial certificate of Genaro Garcia Marcos is referred to in the testimony of Sanchez, pages 516 and 518 of the record, with the same attempted proof as is made in reference to the other certificates, and this certificate is Exhibit No. 14, pages 1013, 1014 of the record. The date of the certificate is July 5th, 1909, and is signed by one purporting to be the priest in charge of the church but is not acknowledged before any Notary or Notarial College. The name of this person in the certificate is Genaro Garcia Marcos, and he is described as the son of Don Augustin and Dona Altegracia, but the surnames of his

parents are not given. He is further described as the widower of Dona Adlaida Pichardo. The name of the mother of the person identified by this burial certificate is not Maria Gracia Marcos but is Altegracia, so that there is no sufficient identification in this certificate of Genaro Garcia Marcos, who is claimed to be the son of Maria Gracia Marcos.

Baptismal certificate of Lorenzo Garcia is referred to in the affidavit of the witness Sanchez on page 823 of the record. He attempted to make the same proof of the copy as is done in reference to the other certificates. The translation of this certificate is found on pages 1036 and 1037 and purports to be signed by one claiming to be the parish priest, the copy being dated May 24th, 1900. The person is identified as Lorenzo, the son of Genaro Garcia and Adela Pichardo. His grandparents are referred to as Augustin and Altegracia Marcos.

The appellees' solicitors in the Table of Descents found on page 120 of their brief, after the attempted tracing of the pedigree of Lorenzo Garcia as the son of Genaro Garcia y Marcos, adds the names of Estaban Garcia and Luis Garcia. There is in this record no certificate of the births of the said Estaban Garcia and Luis Garcia or identification of them as the children of the said Lorenzo Garcia or heirs of Maria Gracia Marcos, except the alleged testimony of Sariol. (Record, page 149). In the bill of complaint in this cause, pages 3 and 4 of the record, it is stated that the children of Altagracia Marcos and the said Garcia were a son, Pedro, a son, Guaro, and a daughter, Micaela, and a daughter, Gertrudis, and a son, Augustin, but there is no mention of any son by name Genaro.

Baptismal certificate of Augustin Garcia y Marcos, referred to on pages 519, 520 of the record in the testimony of Sanchez. The same attempt is made to prove the record by said certificate by said Sanchez as was done in reference to the other certificates. This certificate is Exhibit No. 15, pages 1017 and 1018 of the record. The

person whose birth is attempted to be recorded is Augustin Ricardo, and he is described as the son of Augustin Gacia and Dona Maria de Gracia Marcos, and his grandparents are also recited in said certificate. The date of his birth is given as the 5th of February, 1833.

The marriage certificate of Don Augustin Ricardo Garcia and Maria de la Concepcion Ochanderena is Exhibit No. 16, page 1019 of the record. The copy is signed the 22nd of April, 1910, and the certificate purports to be made by the curate of the church. The date of the marriage is the 21st of November, 1867.

The burial certificate referred to on page 523 of the record, being Exhibit No. 18, page 1024 of the record, is not the burial certificate of Augustin Garcia y Marcos, the son of Maria Garcia Marcos, as indicated in the table of descents in appellees' brief, but apparently is the burial certificate of Augustin Garcia, the husband of Maria de Gracia Marcos, and he is so described in the certificate, and the date of his death is stated to be April 26th, 1836, and whereas the marriage certificate of the said Augustin Ricardo Garcia, who is described as the son of Don Augustin and Dona Maria Garcia Marcos, is dated the 21st of November, 1867, see Exhibit 16 on pages 1019 and 1020 of record, so that there is no burial certificate in this record of the said Augustin Garcia y Marcos.

The baptismal certificate of Ricardo Garcia mentioned in said table of descents is referred to on pages 521, 523 of the record, in the testimony of the witness Sanchez, and the same objection is made to the method of proof as to the other certificates. This certificate is No. 17, page 1022, 1023, of the record, and he is there described as Ricardo Cecilio, the son of Don Augustin Garcia Marcos and Dona Concepcion Ochanderena. The date of birth is the 22nd of November, 1876. The certificate purports to be made by the priest but the portion of the certificate showing the date of the making of the copy is found on page 1022 in Spanish and is not translated.

Appellees' solicitors in the said alleged table of descents, page 120 of their brief, after the reference to the

baptismal certificate of Ricardo Garcia, insert the names of Gertrudis Garcia and Maria Teresa Garcia, apparently intending to indicate that they were children of Augustin Garcia y Marcos, but, as stated above, the burial certificate, Exhibit No. 18, pages 1024, 1025 of the record, is that of Augustin Garcia, the husband of Maria Gracia Marcos, and there does not appear in this record any evidence of Gertrudis Garcia and Maria Teresa Garcia as children of Augustin Garcia y Marcos nor any evidence of the pedigree of the said persons, except the alleged testimony of Sariol. (Record, page 149).

In the burial certificate of Augustin Garcia, the husband of Dona Maria de Gracia Marcos, Exhibit 18, his living children are stated to be Genaro, Pedro, Miguel Augustine, Florentino and Maria Gertrudis.

RESULTS OF ANALYSIS OF TABLE OF DESCENTS FOUND IN APPELLEES' BRIEF, PAGE 120.

Even if the method of proof of pedigree of the said complainants were held to be sufficient, the only persons named in the bill as complainants, whose pedigree is attempted to be traced, are the following: Felix Genaro Marcos, Ernesto Pozo y Nunez or Ernesto Nunez del Pozo, Lorenzo Garcia or Lorenzo Garcia y Pechardo, and Ricardo Garcia, named in the bill as Ricardo Garcia y Ochandarena. As to these persons, as hereabove stated, the record shows that according to the testimony of the witness Sariol, pages 148, 150, the said Felix Genaro Marcos was dead prior to the filing of the bill in this cause or prior to the final decree in said cause. The pedigree of the said Felix Genaro Marcos is attempted to be established through the said testimony of the said Sanchez, and the said certificates are hereinabove shown to be incompetent method of proof. The pedigree of the said Ernesto Nunez del Pozo is attempted to be established in the same manner.

The burial certificate of Christina del Pozo y Marcos, being Exhibit No. 9, pages 999 and 1002, states that she left a will and also that she left four children, whose names we have hereinbefore stated. There has been no proof made in this case of the said will or evidence that the will did not devise her interest in this real estate. There has been no proof of the descendants of her children other than Ernesto or of the death of the said three other children.

The pedigree of Lorenzo Garcia, who is claimed by appellees to be a grandson of Maria Gracia Marcos, is attempted to be established by the same method of proof, namely by the testimony of Sanchez and the said certificates. As we have hereinabove stated, there is no proof of the death of the said Maria Gracia Marcos, and therefore no showing in this record that the said Lorenzo Garcia inherited any part of her interest in this real estate.

The descent of Ricardo Garcia is attempted to be established by appellees as a son of Augustin Garcia y Marcos and a grandson of Maria Gracia Marcos. There is no burial certificate or other evidence of the death of the said Augustin Garcia y Marcos and therefore there is in this record no proof that the said Ricardo Garcia has a right to inherit any part of the interest of the said Augustin Garcia y Marcos in this real estate.

A careful analysis of the said Table of Descents and this evidence, therefore, shows that even according to the method of proof adopted by appellees, the only one of the complainants whose pedigree is even apparently proven is that of Felix Genaro Marcos, and it is very doubtful under the evidence of the witness Sariol whether he is living or dead. Apparently, according to said evidence he was dead at the time of entering of the decree in this cause.

Only the pedigree of three others of the said complainants is claimed in their alleged Table of Descents by appellees to have been established, to-wit, Ernesto Nunez del Pozo, Lorenzo Garcia and Ricardo Garcia. As stated above, there are serious defects in the said proofs of the

pedigree of these persons even if the method of proof adopted by appellees is permitted. If Felix Genaro Marcos is found to be still living and the method of proving pedigree which appellees use is permitted, he is the only one of the complainants whose pedigree has been even apparently established.

THERE ARE THIRTY-THREE COMPLAINANTS TO THE BILL OF COMPLAINT. PEDIGREE OF ONLY FOUR OF COMPLAINANTS CLAIMED BY APPELLEES TO HAVE BEEN PROVEN BUT IN FACT PEDIGREE OF ONLY ONE OF COMPLAINANTS ESTABLISHED, TO-WIT, FELIX GENARO MARCOS, IF HE BE LIVING, AND METHOD OF PROOF USED BY APPELLEES IS ALLOWABLE.

An examination of the names of the complainants in the bill of complaint will establish that there are thirty-three complainants named in the bill. The evidence in this case referred to in the Table of Descents in the brief of appellees, page 120, if permissible, would only establish the pedigree of one complainant, Felix Genaro Marcos, by a connected chain of proof. We insist that the method of proof used even as to him is not authorized by law and therefore his pedigree is not proven. We insist further that the evidence either shows that the said Felix Genaro Marcos was dead at the time of the entry of the decree in this cause, or leaves it certainly in grave doubt. The same observations apply to the claim of proof of pedigree of the three other complainants named in the said Table of Descents in appellees' brief, to-wit, Ernesto Nunez del Pozo, Lorenzo Garcia and Ricardo Garcia, and in addition there are serious breaks in the attempted chain of proof in the pedigree of these persons, as we have herein pointed out. There does not in this record appear to be any proof of the pedigree of Estaban Garcia, Luis Garcia, Gertrudis Garcia and Maria Teresa Garcia as indicated in the said Table of

Descents stated in appellees' brief, page 120, except the alleged testimony of the witness Sariol, who did not know them personally prior to 1908. (Record, page 149). In the bill of complaint in the statement of the pedigree of complainants it is alleged that the said original Miguel Marcos, the grantee, and the said Teresa Rodriguez, to whom the Grant was confirmed, had three children, Miguel Josef Marcos, Dorotea Marcos and Altagracia Marcos. According to the allegations of the bill the said Dorotea Marcos left surviving her five children, which would constitute five branches of her family. The appellees only claim to establish the pedigree of one heir of one of the five branches of the heirs of Dorotea Marcos to-wit: Ernesto Nunez Del Pozo. The said Maria Gracia Marcos is not named in the bill of complaint but Altegracia Marcos is alleged to have left surviving her five children, making five branches of her family. The appellees claim to have proven the pedigree of Lorenzo Garcia as a grandson of Maria Gracia Marcos, being a member of one of the branches of her family, and Ricardo Garcia, a member of another branch of her family. There is, therefore, no proof of the pedigree of any member of four branches of the family of Dorotea Marcos, and no proof of any member of three branches of the family of Maria Gracia Marcos or Altegracia Marcos. It is perfectly plain from this analysis of the allegation of the bill and the evidence and the alleged table of descents claimed by appellees on page 120 of their brief that there can in this case be no such thing as a contention successfully made that the complainants whose pedigree has been proven are representatives of each of the branches of the families descended from the children of Miguel Marcos and Teresa Rodriguez. The bill alleges that Miguel Marcos y Rodriguez left two sons, Miguel Marcos y Diaz and Felix Genaro Marcos y Diaz, and that the said Miguel Marcos y Diaz died without issue, but there is no proof in the record by burial certificate or otherwise of the death of the said Miguel Marcos y Diaz, the brother of the said Felix Genaro Marcos mentioned in Table of Descents,

nor whether or not he died without issue, and therefore the descendants, if any, of that branch of the family of Miguel Marcos y Rodriguez is not accounted for in the evidence in this case.

Appellant has insisted in the brief filed in this case that the doctrine was unsound contended for by appellees that in a suit of this character a few of the heirs at law of a deceased person could maintain the bill as representing others in the same class.

The foregoing analysis of proof as to pedigree shows the danger of permitting a suit by one or more alleged heirs to be conducted for themselves and other persons claiming to be heirs, and this analysis of the evidence further either establishes that none of the complainants have proven their pedigree as heirs at law of Teresa Rodriguez or that that matter is left in grave doubt. Complainants cannot maintain a bill to cancel conveyances unless their own title and right of action is clear and undoubted.

APPELLEES' STATEMENTS IN THEIR BRIEF AS TO LACHES.

On page 129 of the brief of appellees, various reasons are attempted to be stated why the doctrine of laches is contended by the appellees not to apply to their suit. We have discussed all of these contentions in our original brief for appellant, but we desire to take issue especially with the reason numbered (4), wherein appellees allege that they brought their action within two years after appellant took its alleged title, and have prosecuted it with a diligence which under the circumstances must be deemed reasonable. The facts established by the record distinctly contradict this statement of appellees' brief. As hereinbefore stated, a bill was filed by parties claiming to be the heirs of Teresa Rodriguez against appellant in the United States Circuit Court for the Southern District of Florida, on the 24th day of June, 1902, and as shown by the original brief of appellant on this final hearing.

This was more than seven years after the order of the Land Department directing the issue of the patent, and within two days of seven years after the issuing of the patent. The other deeds sought to be cancelled in this suit, under which the appellant claims title, were executed many years before the filing of either of the said bills herein, as will appear from the dates of said deeds fully set forth in the original brief of appellant on final hearing herein. The appellees were entitled to have filed their bill many years before the Land Department ordered the issuing of the patent, based on their alleged title under the Grant and the confirmation thereof, if they establish that they were and are the heirs of Teresa Rodriguez. The bill filed in 1902, referred to by appellees in their brief, was not prosecuted with diligence, but as shown by the record was dismissed for want of prosecution, and the reason given by the then solicitors of the complainants in that bill was in effect that they had not been furnished with the evidence by the complainants in that bill with which to establish their right. See pages 1031 to 1034, inclusive, of the record. The date of the filing by these appellees of their own bill, to-wit, on the 1st day of May, 1907, must determine whether or not the appellees have been guilty of laches in bringing this suit for the purposes stated in the bill. The fact that certain complainants filed another bill on the 24th day of June, 1902, which was dismissed on the 4th day of April, 1904, would not aid the appellees case or excuse them from the laches they were guilty of in the filing of the present bill in this cause. It is entirely apparent from a consideration of the dates of the transaction and of the conveyances, that there is no diligence whatever by appellees in the filing of the bill in this cause, and, in fact, as shown by the record, these appellees have been guilty of the grossest negligence in the bringing of this suit. The grounds on which we contend that laches apply to this suit, are fully stated in the original brief of appellant herein, and will not here be repated.

FLORIDA STATUTE OF LIMITATIONS ARE APPLICABLE TO THIS SUIT:

See following Sections of General Statutes. Numbers not in parenthesis refer to the General Statutes; numbers in parenthesis to the Revised Statutes of Florida.

Sections 1718 (1287), 1719 (1288), 1720 (1289), 1721 (1290), 1725 (1224), refer to any action founded upon the title to real property.

Section 1719 (1288) is not confined to actions for the recovery of real property, but distinctly refers to the limitation on any cause of action or defense to an action or any action founded upon the titles to real property.

Section 1721 (1290) defines adverse possession under color of title, and has reference to any action in regard to the title to real property.

For these sections of the General Statutes of Florida, see Appendix to original brief of appellant herein on the merits.

The language of Section 1725 (1294) of the General Statutes of Florida, and especially of Subdivision 4, clearly applies to all actions other than for the *recovery* of real property. If the present suit be treated as a suit not for the *recovery* of real property barred in seven years under Section 1718 (1287) it is an action *other than one for the recovery of real property*, and therefore clearly comes within Subdivision 4 of said Section 1725 (1294), providing the bar of four years for "any action for relief not specifically provided for *in this chapter*." The words "in this chapter" refer to Chapter XXVII of the General Statutes of the State of Florida or same number of chapter of Revised Statutes of Florida. It will be observed that the language of subdivision 4 providing the bar of four years for any action of relief not specifically provided *for in this chapter*, provides a bar which is to cover any action of any character not provided for in the *entire chapter*, and is not confined to actions as to personal property or on contracts or on torts. The mere mode of subdividing this chapter into articles

cannot change the force and effect of the language of this provision, and therefore the argument of appellees' solicitors that it does not apply to the suit at bar is insufficient. We have fully discussed in the original brief the actual possession of this Grant of land from 1872 by those under whom appellant claims title, and by the appellant, and we insist that there was always from that date such possession of the Grant as that the appellees or whoever were the heirs of Teresa Rodriguez could have brought their action at law against those under whom appellant claims title, or against appellant since 1900, to test the title of appellees to this land. We have also shown in the original brief that appellees could have filed a bill of equity at any time after the confirmation of this Grant to set aside any deeds to the property which was subject to be cancelled by a court of equity.

The language of subdivision 4, of Section 1294, Revised Statutes of Florida, is as follows:

> "*Within Four Years*—An action for any article charged in a store account, and any action for relief not specifically provided for in this chapter."

and in the notes appended to this paragraph by the Revisors occurs the following language:

> "This section applies to suits for dower and mesne profits. Branch vs. Cole, 18 Fla., 368"

which was a suit in equity in reference to dower in land, and shows that the revisors regarded the said provision as to the bar of four years to apply to actions in equity concerning land.

Section 1725 of the General Statutes reads as follows:

> 4. "*Within Four Years.* Any action for relief not specifically provided for in this chapter."

Under this subdivision, the Commissioners who prepared the General Statutes of Florida, have inserted the following language: "This section applies to suits for dower and mesne profits. Branch vs. Cole, 18 Fla., 368," and as above stated, that was a suit in equity for dower in

lands. The Revised Statutes of Florida were in force after the 15th of June, 1892, and until December 1, 1906, when the General Statutes of Florida went into effect. Prior to the 15th of June, 1892, the statute of limitations in Florida provided that any actions for relief not otherwise specifically provided for were barred in four years. The appellees in their brief, page 136, refer to the Florida case of Dees vs. Smith, 55 Fla., 652, to sustain the position that the four years limitation under the revenue or tax laws within which suits may be brought against persons holding under tax title does not apply to an equitable suit to remove a cloud. An examination of this case will show that the case has no reference to the four year limitation in the General Statutes of limitations which we have hereinbefore just discussed, but has reference to a special limitation of suits brought by former owners of land to obtain possession from one claiming or holding possession under a tax title. It is an entirely different statute from the four-year limitation statute in the General Statutes of limitations hereinbefore referred to, and the case has no application to the case at bar.

LIMITATIONS UNDER FLORIDA STATUTES IN REFERENCE TO SALES OF LANDS FOR TAXES.

It is contended by appellees that the Florida statutes, to-wit, Section 20, Acts 1872, Chapter 1887, and Section 63, Acts 1874, Chapter 1976, and Section 61, Acts 1879, Chapter 3099 (see pages 157 to 159 inclusive, Brief for Appellant on Final Hearing) do not apply in this case because the deeds sought to be cancelled are void on the face thereof, and appellees cite the Florida cases of McKeown vs. Collins, 38 Fla., Text 285, and Sadler vs. Smith, 54 Fla., 671, in support of this contention. The deeds sought to be cancelled in this case are not void on the face thereof. As shown by the brief of appellees, the attacks on these deeds relied upon in the brief by appellees, are that they claim the land was not subject to taxation, and also that there was no assessment or no

valid assessment. These are grounds that do not affect the deed on its face, and the statute of Florida barring actions in reference to such deeds would apply. See Florida Finance Co. vs. Sheffield, 56 Fla., 286-9.

The case of Dees vs. Smith, 55 Fla., 652, cited by appellees, does not apply to the case at bar. Appellees cited it to the proposition that the four year limitation in Florida under the tax acts does not apply to a suit to cancel or remove clouds from title. An examination of the case will disclose that the statute the court had under consideration was Chapter 4322, Acts 1895, which had reference only to suits for the recovery of the possession of property, and was an entirely different statute from Section 20, Chapter 1887, Acts 1872; Section 63, Chapter 1976, Acts 1874, Section 61, Chapter 3099, Acts 1879. The language of these acts distinctly applies to suits to set aside tax deeds, and the limitation provided for in those acts are distinctly applicable to the suit at bar, and the case of Dees vs. Smith, 55 Fla., 652, cited appellees, does not discuss these acts relied upon by appellant or apply to them.

THE APPELLANT AND THOSE UNDER WHOM IT CLAIMS HAD TITLE BY ADVERSE POSSESSION AND PRESCRIPTION UNDER THE STATUTE OF LIMITATIONS OF THE STATE OF FLORIDA.

In appellant's original brief, on pages 108 to 112, inclusive, the evidence establishing the adverse possession of appellant and those under whom it claims title from May 3, 1872 to 1900, when the appellant acquired title, is fully discussed. There can be no question under the evidence that from May 30, 1872, the date of the deed from William Mills to George C. Powell, mentioned in the bill of complaint, to 1900, there was an actual adverse possession of this Grant by those under whom appellant claims title. From May 3, 1872, until October 27, 1881, the date of the deed from George C. Powell to Henry S.

Sanford, mentioned in the bill of complaint and the record, the actual adverse possession and use of this land by those under whom appellant claims was complete in all respects, and from 1881 until 1900 portions of the land were constantly in actual use and occupation by those under whom appellant claims, and the balance of said land in the possession and control of said persons under whom appellant claims title. From 1900, when the appellant acquired its deed of conveyance from the Florida Land & Colonization Company, this land has been in the constant possession of the appellant through its agents and actual possession and use of portions of it, as set forth in the original brief of appellants, pages 112 to 114, of the record. It is contended by appellees in their brief that the deeds under the tax sales referred to in the bill of complaint and under which appellant's grantors claim title, are void on their face, but under the decisions of the Supreme Court of Florida, even though these deeds be void, they still are color of title under which a title by adverse possession may be acquired by the grantee in such tax deed and those claiming under such grantee.

See Townsend vs. Edwards, 25 Fla., 582.
Carn vs. Haisley et al, 22 Fla., 320-321.
Florida Finance Co. vs. Sheffield, 56 Fla., 292.

A PRESCRIPTIVE TITLE OR TITLE BY ADVERSE POSSESSION MAY BE ACQUIRED OF A SPANISH GRANT BEFORE THE ISSUE OF PATENT FROM THE UNITED STATES.

It has been determined by the Supreme Court of Florida, and also by the Supreme Court of the United States, that after the confirmation of a grant of land from Spain to a private party, persons other than such grantee may acquire title against the grantee by prescription or adverse possession. In the case of Wilson vs. Knight et al., 48 Fla., 198, 203, 204, it is decided that the grant therein referred to when confirmed vested title in

the grantee, and "that the United States did not acquire any property right in or to the land covered by such grant under the treaty of cession of the Floridas in 1819." Citing McGehee vs. Alba, 9 Fla., 392 Doe ex dem Magruder vs. Rowe, 13 Fla., 602. This case further decides that "Such Spanish Grant being the property of private individuals February 1872, when our statute of limitations, Chapter 1869, Laws of Florida, was enacted, limiting the time to seven years for the acquirement of a prescriptive title, such statute of limitation was operative as against the then private owners of such Spanish Grant from the date of its passage on February 27, 1872, and that by virtue of such statute of limitations, a prescriptive title could have been acquired and perfected to the whole or part of such grant prior to its purchase by the United States in November 1883." This case further decides that the subsequent patent issued by the United States was ineffectual to convey title as against such prior perfected prescriptive title, citing Joplin vs. Chachere, 192 U. S. Sup. Ct. Rep., 94. In the case last mentioned, this court held that the confirmation by commissioners appointed under the Act of Congress, followed by a confirmation by an Act of Congress, of the claim and by a survey, pass title so to permit prescription founded on possession to begin to run before the patent issued. This court cited in the last named case Langdeau vs. Hanes, 21 Wallace 521-531, 22 L. ed. 606. In that case, it was determined that a Legislative confirmation of a claim to land is a recognition of the validity of such claim and operates as effectually as a grant or quit-claim from the Government. "If the claim be to land with defined boundaries or capable of identification, the legislative confirmation perfects the title to the particular tract and the subsequent patent is only documentary evidence of that title." The court further held that adverse possession of the premises under claim and color of title made in good faith with payment of the taxes legally assessed thereon after the title of the grantee was perfected by confirmation, or when necessary by confirmation and survey, and

before the patent issued continued within the period prescribed by the statute of limitations was a bar to any recovery by the heirs upon the patent." See also Morrow vs. Whitney, 95 U. S., 551, 24 L. ed 446. See also Ryan vs. Carter, 93 U. S., 78. In these cases it is clearly determined that if the grant is defined or capable of identification the legislative confirmation perfects the title to the particular tract and the subsequent patent is only documentary evidence of that title. The cases further decide that even if the grant is not to the specific tract or one capable of identification the confirmation will immediately attach the title to the land after survey, and in the case of Langdeau vs. Hanes above cited it was afterwards held that even if the grant in that case was of the certain quantity and undefined and incapable of identification the title became perfect when the land was segregated by the survey although the patent was issued in that case fifty-two years after the survey. It will also be here noted that the cases of Langdeau vs. Hanes and Morrow vs. Whitney above mentioned, were brought to this court by writ of error to the Supreme Courts of the several states where the cases have been heard and determined, showing that these were Federal questions that could be heard and determined in this court. See also Whitney vs. Morrow, 112 U. S. 693, 28 L. ed 871. In this latter case, this court decided "that if there were any difference in the two conveyances of the Government that by a direct legislative act, and that by officials acting under provisions of the statute, it would seem that there should be greater weight and dignity attached to the legislative grant as proceeding more immediately from the source of title than the patent."

In the case of Joplin vs. Chachere, 192 U. S., 94, above mentioned, the defendants claimed under a tax title, and also by possession, improvements and the payment of taxes, and pleaded various statutes of prescriptions in Louisiana. In that case, the survey was made in 1856, but was not approved until May 9, 1900. The patent was issued to the plaintiffs July 16, 1900. The court held that

although the survey was not approved until May 9, 1900, and the patent issued to the plaintiffs in July 1900, that the defendants had a right to rely on their adverse possession under tax sale made in [illegible] and overruled the contention of plaintiff's attorneys that this defense could not avail against the patent. The court refers to the opinion of the Supreme Court of Louisiana in regard to the survey in 1856 in that case, as follows: "The identity of the tract confirmed must have been fixed by evidence before the board, and the survey which followed was unquestionably based upon that evidence preserved and made known to the surveyor." * * * and further as follows: "If, however, a survey of the claim was necessary in order to complete the transfer of ownership of this property to Joplin, we are satisfied that the survey of the same was made and approved by the Surveyor General W. J. McCulloh as far back as 1856."

In the case at bar, as stated in the appellant's brief herein, this Grant was confirmed in 1828. The Act of Congress required the grantees to furnish to the Surveyor General the location and description of the Grant and evidence on which the survey could be made for the purpose of extending the Grant on the Government Township Plats. As shown by the record and as stated in appellant's brief, this survey under the direction of the Surveyor General was made in January 1851 by M. A. Williams, and the survey approved by B. A. Putnam, Surveyor General in June 1851, and the survey, as stated in the decisions above cited, attached itself to the confirmation of the Grant by Act of Congress of May 3, 1828. As to appellant's argument and reference to the survey, see pages 39 to 50 inclusive of appellant's original brief on final hearing herein. This land was sold for taxes July 5, 1852, and again April 23, 1872, and possession was taken of the Grant certainly as shown by the evidence in 1872 by persons claiming under tax titles, and appellant claims title under those persons. The foregoing decisions determine that appellant is authorized to and can successfully plead title by prescription and

adverse possession of those under whom it claims under the said tax sales although there had been no patent issued by the United States to this land. The United States District Judge in his opinion and decree which was confirmed by the U. S. Circuit Court of Appeals, held to the contrary and held that the land was not subject to the taxation by the State prior to the issue of the patent, and that no claim of occupation or possession under the tax deeds issued during that period would be valid, nor could persons holding such rely upon the statute of limitations for title by adverse possession. See page 92 of the record. These rulings of the District Judge, affirmed by the U. S. Circuit Court of Appeals, we submit are erroneous and contrary to the decisions of this court and particularly those hereinabove referred to. The effect of these decisions is also that as to the title under the Spanish Grant and confirmation thereof by the Act of Congress, it became vested in the grantees under the Spanish Grant and the land was undoubtedly subject to taxation.

On all of the grounds stated in appellant's briefs herein, it is submitted that appellees were not entitled to a decree in their favor, and that the said decree of the District Judge and the judgment of the United States Circuit Court of Appeals of the Fifth Circuit affirming said decree should be reversed and the bill ordered dismissed.

James B. Knapp

Solicitor for Appellant.

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No. ~~[illegible]~~.

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Supreme Court of the United States.

October Term, 1913.

~~No. [illegible]~~

WILSON CYPRESS COMPANY,
Appellant,

against

ENRIQUE DEL POZO Y MARCOS, *et al.*,
Appellees.

BRIEF FOR APPELLANT ON MOTION TO DISMISS FOR WANT OF JURISDICTION.

John C. Cooper,
Solicitor and Counsel for Appellant.

Stillman Appellate Printing Co., 61 Broad St., N. Y.

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In the Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 1030.

WILSON CYPRESS COMPANY,
Appellant,

against

ENRIQUE DEL POZO Y MARCOS *et al.*,
Appellees.

No. 1030,
October Term,
1912.

BRIEF FOR APPELLANT ON MOTION OF APPELLEES TO DISMISS FOR WANT OF JURISDICTION.

The appellees have filed in the above cause a motion to dismiss the appeal taken in the above stated cause from the decree of the United States Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States, on the ground that the said Supreme Court is without jurisdiction to hear and determine said appeal.

This appeal was taken and allowed from the decree of the United States Circuit Court of Appeals for the Fifth Circuit, on the grounds that said Circuit Court of Appeals

had not final jurisdiction in the cause and that the decree of that Court is not made final under the laws of the United States.

Under Section 241 of the Judicial Code, an appeal of right exists in any case in which the judgment or decree of the Circuit Court of Appeals is not made final. Section 128 of the Judicial Code provides that the judgments and decrees of the circuit courts of appeal shall be final in all cases in which the jurisdiction is dependent *entirely* upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states. The case made by the bill of complaint of the appellees in the District Court in this cause presented several Federal questions for determination by that Court. The title claimed and set up by the appellees as complainants in said bill arose through the construction contended for by appellees in that bill of a treaty between the United States and Spain and certain laws of the United States, some of which were enacted to carry into effect the treaty, and others in reference to public lands of the United States. The appellees' claim for the relief prayed in the bill involved and required the construction of this treaty and these laws of the United States.

Statement.

An examination of the allegations of the bill of complaint will disclose that it was brought to obtain a decree enjoining the appellant from claiming title under certain sales made by the State of Florida for the non-payment of taxes and praying the cancellation of the deeds made in pursuance of these sales and other deeds executed by parties claiming title under said tax sales.

The First allegation of the bill states the appellees' title as being derived from a grant by Spain to one Miguel

Marcos and the confirmation by the United States of that grant to his widow and children. This paragraph alleges that the grant was an inchoate right under the laws of Spain and that under the Eighth Article of the Treaty between the United States and Spain the United States occupied the position of Spain with regard to the grant and that the title thereto passed to the United States subject to the equitable claim of the grantees (pages 2 and 3 of the Record).

The Thirteenth paragraph of the bill states the action of the Board of Land Commissioners recommended a confirmation of this grant and the report of the Board to Congress to that effect. This paragraph of the bill also states that under the provisions of the Act of Congress of May 23, 1828 (4th Statutes at Large, page 284), the grant was confirmed to the extent of a league square to be located within the limits of the original grant (page 7, R.).

The Fourteenth paragraph of the bill alleges that by the terms of the Sixth Section of said Act of Congress, the grantees were required to accept the confirmation of the grant to the extent of a league square or bring proceedings before the Judge of the Superior Court of the District of Florida, and that no such proceedings were brought, and that the ancestors of the appellees were, *by said Act of Congress*, confirmed in their title to said lands to the extent of a quantity equal to one league square (page 7, R.).

The Fifteenth paragraph of the bill alleges that the Judicial and Executive Branches of the Government of the United States held that the quantity of land contained in a league square is 4,438.68 acres; that it was the duty of the ~~Attorney~~ Surveyor-General of the Territory to survey the lands so confirmed. This Fifteenth paragraph of the bill then sets out, as one of the Acts of Congress relied upon

by the appellees, the Act of March 3, A. D. 1807, by the terms of which it was made unlawful to take possession of, survey or cause to be surveyed, or settle upon, any lands ceded or secured to the United States by any treaty with a foreign nation, or any land, the claim to which had not been recognized or confirmed by the United States (pages 7 and 8, R.).

The Sixteenth paragraph alleges that these lands were surveyed in 1847 as public lands and from 1831 to the 12th of February, 1894, were regarded as public lands. This paragraph states the order of the Land Department of the 12th of February, 1894, declaring this grant to be a valid, confirmed, private grant to Teresa Rodriguez and ordered to be patented, and that on the 26th of June, 1895, the grant was patented by the United States to said Teresa Rodriguez, her heirs, assigns and legal representatives (pages 8 and 9, R.).

The Seventeenth paragraph alleges that from and after May 23, 1828, the date of the Act of Congress above referred to, and until this order of February 12, 1894, Teresa Rodriguez and her heirs, assigns and legal representatives were excluded from the possession of the land by the United States, and the United States had both the legal title and possession and right of possession of said lands, and any occupancy of said lands by any others than the United States was a mere trespass and that the appellees and those under whom they claimed were not able to take possession of the lands or to locate the same, because the United States claimed the ~~minute~~ whole of the grant was public lands (page 9, R.).

The Eighteenth paragraph of the bill sets out the first of the tax sales sought to be declared illegal and void and alleges that during this period when the United States was in possession, *it had the legal title to these lands, to wit, on the 5th of July, 1852, that the sheriff and tax collector*

of Orange County, Florida, attempted to sell and convey these lands for non-payment of taxes, and that the deed was placed on the public records; and that the assessment, sale, and deed were null and void because the sale was for the non-payment of taxes for the years 1845 to 1850, inclusive, during which time the legal title to said lands was alleged in the bill to have been held by the United States, and that the United States claimed the ownership and had the possession thereof, and that the said 4,438.68 acres of said grant was so confirmed to Teresa Rodriguez as an unsegregated part thereof, and that all of said lands were, for the reasons just stated, not subject to taxation (pages 9 and 10, R.). Subdivision 2 of this paragraph further alleges that the said 4,438.68 acres out of such grant was the only portion that could be subject to taxation under the law as construed and announced and held by the Judicial and Executive Branches of the Government of the United States (page 10, R.).

The Nineteenth paragraph of the bill alleges that on the 23rd of April, 1872, the lands contained in this grant were again sold for the non-payment of taxes for the years 1867, 1868 and 1869, and alleges that the ancestors of the appellees were, at that time, the owners of an inchoate right in 4,438.68 acres of said land under said grant by Spain, and that the United States claimed ownership of the whole grant and was in possession thereof and held and treated the lands as public lands of the United States. This paragraph further states that a deed was made under said sale on the 23rd of April, 1872, by one Robert C. Partin as Tax Collector to one William Mills. Subdivision 1 of this paragraph states that the lands were not subject to taxation during said years of 1867, 1868 and 1869, but were at all the times between May 23, 1828, and up to 1895, in the adverse possession of the United States claiming to be the owner thereof.

This date, May 23, 1828, was the date of the Act of Congress confirming the grant hereinabove referred to; and 1895 is the year in which the patent was made by the United States to Teresa Rodriguez, her heirs, assigns and legal representatives (page 12, R.).

The Twenty-fourth paragraph of the bill alleges that during the time that one Powell occupied portions of this land, the appellees and their predecessors in title were precluded from bringing any action for the recovery of the lands in the occupancy of Powell, for the reason that all the lands contained in the said grant were adversely held and claimed by the United States and held to be public lands by the United States (page 15, R.).

The Twenty-fifth paragraph of the bill asserts that, while the appellees were excluded from possession by the United States, Powell conveyed portions of the lands and certain other tax sales were made of the lands to certain other persons (pages 15, 16, R.).

The Thirty-second paragraph of the bill states the action of the Land Department of the United States; that the United States refused to recognize the grant until November, 1894, when the ruling of the Commissioner of the General Land Office was reversed by the Secretary of the Interior and the United States then recognized the lands as private lands and as belonging to the appellees and to those under whom they claimed. This paragraph further avers that the survey of said private claim or grant was not approved and did not become effective as a segregation of said lands from public domain until June 18th, 1894 (page 18, R.).

The Thirty-third paragraph of the bill states the action of the United States in attempting to convey a portion of these lands included in this grant to the State of Florida (pages 18, 19, R.).

The Thirty-fourth paragraph of the bill alleges that on the 26th of June, 1895, the United States patented to the legal representatives of Teresa Rodriguez the said lands granted to the said Marcos, as set out in paragraph First of the bill (page 19, R.).

The Thirty-fifth paragraph of the bill states that from and after June 26, 1895, the appellees and their predecessors were for the first time entitled to the possession of these lands and from and after said date, said lands first became subject to taxation (pages 19, 20, R.).

In the Thirty-sixth paragraph of the bill, the appellees allege that the patent is the evidence of the action of the United States upon the title to the lands granted to said Marcos, and is a conveyance of the interest of the United States therein, and that the patent is based on the survey approved June 18, 1894. In this paragraph, the appellees then distinctly allege that the United States did not relinquish title and possession until the date of said patent, to wit, the 26th day of June, 1895, and that until said date the appellees and those under whom they held title had no right to possession of the lands in said patent described. This paragraph further asserts that the obligation to confirm grants of lands assumed by the United States by the Treaty with Spain was political in character and was to be discharged as the United States determined, and that that Government retained possession and title from May 23, 1828, until the issuance of the patent, and that before the approval of the survey of the lands granted to Marcos, the legal title was in the United States, and the claim of the appellees attached to no particular land (page 21, R.).

The prayer of the bill was for an injunction prohibiting the appellant from obtaining or holding possession of these lands and from claiming any right, title and interest in the land under the deeds referred to in the bill, and from selling, conveying or encumbering the land, or from tres-

passing thereon, and for the cancellation of the several deeds made under said tax sales above referred to and the other deeds made by persons claiming under said tax sales and for the cancellation of all tax sales, tax certificates and tax deeds issued thereon in reference to said lands prior to February 12, 1894, the date of the order of the Secretary of the Interior recognizing this grant as a confirmed grant and directing the issuing of the patent therefor.

From the foregoing references to the bill of complaint, it will clearly be seen that the case attempted to be made by the appellees was that the grant from Spain to Marcos was an inchoate grant and was not confirmed in full and complete title by the Treaty between the United States and Spain, and that the action of the Board of Land Commissioners appointed by the United States did not recognize this grant as a complete grant, and that the grant was not confirmed as a complete and perfect title by the Act of Congress of May 23, 1828. The true construction of the Treaty and its effect upon this grant are directly made necessary by the appellees' bill of complaint to support their case. The true construction and application of the Act of Congress of May 23, 1828, confirming the grant and its effect are made necessary by the appellees' case as stated in the appellees' bill of complaint. The legal effect of the action of the United States Land Department in refusing prior to 1894 to recognize this grant and in attempting to convey portions of it to the State of Florida under the Swamp and Overflow Land Acts is made a part of appellees' case. The alleged necessity of a survey of the grant and of the approval of such survey, is raised by the bill, the question, as to whether a patent is necessary to perfect the title of the appellees, is made a part of the case under which the appellees claim relief in their bill. The construction, application and effect of the Act of Congress

of March 3rd, 1807, in preventing persons from taking possession of or surveying lands ceded to the United States, are directly raised by the bill to excuse the appellees and those under whom they claim from surveying or having surveyed this grant and from taking possession or bringing proper action against others who took possession of the grant.

The purposes of the allegations of the bill hereinbefore referred to are to present the case attempted to be stated by the appellees, to-wit, that the sales for non-payment of taxes for the years 1845 to 1851, inclusive, were void, because, as appellees contend, the lands were still a part of the domain of the United States and the United States was in possession of same under its laws, and that the sales for the non-payment of taxes of 1867 to 1869, inclusive, were void for the same reasons.

The bill further attempts to allege that, by reason of the effect of the Acts of Congress referred to in the bill and the true effect and construction of the grant and of the Treaty, the appellees had no right to possession of the land until 1895 and no right to maintain any action based on their claim of title to the land. These matters as to possession are set up in the bill as a part of the basis of appellees' right of action. It will thus be seen that the claims of title of the appellees and their case and right to relief depend upon the true construction of the Treaty, the Acts of Congress passed to carry out the Treaty, particularly that of May 23, 1828, the Acts of the Board of Land Commissioners and the Decisions and Rulings of the United States Land Department and the Secretary of the Interior and the nature of the claims of the appellees and those under whom they derived title, to-wit, claims prior to the issuing of the said patent. Other grounds of attack are made in the Bill upon the tax sales of these lands and the deeds under which appellant claimed title, but the taxable character of the land was the principal ground, as shown by the Bill.

Federal Questions Involved in This Suit.

There are, as will be seen from the allegations of the bill, a number of Federal questions distinctly raised by the bill of complaint and necessarily involved in it and passed upon by the courts in making the decrees appealed from herein. These Federal questions are also necessary to be determined in order to sustain the case attempted to be made by the appellees in their bill.

Construction of Treaty Between United States and Spain.

The appellees in their bill of complaint insist that this grant was not subject to taxation by the State of Florida in the years 1845 to 1851, inclusive, and in the years 1867 to 1869, inclusive, on the alleged ground that the grant of this land from Spain to Marcos was an inchoate or incomplete grant, and that by the true construction of the terms of the treaty the grant did not become a complete and perfect title in Marcos. The defendant insisted in its answer that the grant was confirmed as a complete and perfect title by the force and effect of this treaty. Therefore, the construction and application of the treaty to the grant and the language of the grant must be considered and determined by the Court before it could be held that the lands were not subject to taxation during the years referred to, and that the sales for taxes during those years were void and that the deeds should be cancelled as claimed by appellees in their bill of complaint.

The Effect of Action of Board of Land Commissioners Appointed to Examine These Land Grants.

The bill alleges the action of this Board of Land Commissioners reporting this grant to Congress for confirmation and refers to American State Papers where the proceedings of this Board are found, and also in the same paragraph refers to the *several Acts of Congress relating thereto* and makes the said proceedings of the Board of Land Commissioners and the several Acts of Congress a part of the bill (p. 3 of R.). The nature of the grant as determined by this Board, to wit, as to whether or not there was a perfect and complete grant vesting complete title, and the construction and effect of each of the Acts of Congress relating thereto and their effect upon the character of this grant, are thus introduced into the bill of complaint. The several Acts of Congress providing for examination and report upon these grants and the confirmation of the grants must be considered in determining whether or not the grant was a complete title for the purposes of taxation; the Act of Congress of May 8, 1822, referred to and construed in the case of *U. S. vs. Perchenans*, 7 Peters 51, the Act of Congress of February 8, 1827, and the Act of May 23, 1828 (4 Stats. at L. p. 284), and the Acts of May 26, 1830, June 22, 1860, and June 10, 1872. The three latter Acts extended the right of the claimants under this class of grants to present their cases to the United States courts for adjudication. These Acts of Congress are all referred to and set out, in substance, in the case of *Mitchell vs. Furman*, 180 U. S. 402, 404.

Construction and Effect of Act of May 23, 1828 (Stats. at L. p. 284).

This grant having been made for 5,500 acres was confirmed by the force and effect of the Act of Congress of May 23, 1828, above referred to. The construction and application of this Act to the terms of the grant is absolutely necessary to support and maintain the case attempted to be made in the bill by the appellees. They maintain in their bill that the grant was an inchoate or incomplete grant and that under the terms of this Act of Congress a survey of the grant was necessary and a patent was necessary to pass the title of the United States and that the title to the property remained in the United States until the patent was issued in 1895. All of these contentions as to the force and effect of this act of Congress are denied by the defendant and directly put in issue by the bill and answer and passed upon by the District Judge in his decree and opinion. The first portions of the opinion (pp. 91-92 of R.) distinctly set out that the validity of the defendant's title depends entirely upon the question of whether the property was subject to taxation by the State of Florida prior to the issue of the patent by the United States in 1895. The Court then reviews the acts of Congress of 1825, of 1827 and of 1828 in reference to these grants and determines that the taxation of the land by the State prior to the issue of the patent was not justified, and further determines that no occupation or possession under these tax deeds prior to the issue of the patent was valid, and that persons holding such possession under said deeds could not rely upon the Statutes of Limitation or title by adverse possession. It is therefore apparent from the allegations of the bill and from the judgment of the District Judge, which was affirmed by the U. S. Court of Appeals, that the construction

of these acts of Congress was necessary to support and maintain the case made by the complainants in their bill. The U. S. Court of Appeals in its opinion (see pp. 1039-40 of R.) also held and determined that the title to these lands remained in the United States until the issuance of the patent and therefore were not taxable by the State of Florida.

Action of the U. S. Land Department and Effect Thereof on the Rights of Appellees and Those Under Whom They Claim.

The bill alleges that from the year 1831 to the 12th of February, 1894, the U. S. Land Department held and determined that this was not a valid grant and refused to recognize it, and that therefore the possession of and the title to the lands remained in the United States, and that these facts excuse the appellees or those under whom they claim from taking any action in reference to the title or possession of the land. The District Judge in his opinion sustained this construction of the force and effect of the action of the U. S. Land Department and the rulings of the U. S. Land Commission (see pp. 92-93 of R.). The defendants deny that the ruling or action of the Land Department prior to the final decision and ruling by the Secretary of the Interior had any such legal effect upon the possession or title to this land and insist that from the confirmation of the grant by Congress, May 23, 1828, the legal title and right of possession in these lands was in Teresa

Rodriguez and her heirs and assigns. The force and effect of the action of the U. S. Land Department and the true construction of the act of May 23, 1828, as to its application to this grant is thus drawn directly in question in this suit. The bill alleged that prior to the ruling of the Secretary of the Interior, February 12, 1894, both the Executive and Judicial Departments of the Government had determined that a league square of land, as mentioned in the act of Congress of May 23, 1828, was 4,438.60 acres, and as this grant contained 5,500 acres, the entire grant was not confirmed by the force and validity of the act of May 23, 1828. The Secretary of the Interior in his opinion and by his order of February 12, 1894, held that a league square was within the meaning of the said act of Congress and claimed 6,002.50 acres, and therefore that by the force and effect of the said act of Congress of May 23, 1828, this grant was fully confirmed and vested title in Teresa Rodriguez, her representatives, heirs and assigns. The ruling therefore of the Secretary of the Interior and the action of the Land Department were directly involved in this case as affecting the taxable character of the land from the date of said act of Congress and the right to the possession of the land by the appellees and those under whom they claim.

The Question as to Whether or not a Survey and Approval of Such Survey Under the Terms of the Grant is Involved in This Case.

The bill of complaint alleges that a survey of the grant was necessary and further alleges that this survey was not approved until June 18, 1894. The complainants in their bill refer to the said patent as a part of their case and as a part of the bill. The patent is found on pages 838 *et seq.* of the record and the survey therein referred to on page 839 was made by M. A. Williams in January, 1851, under the contract with Benjamin A. Putnam, Surveyor-General of Florida, on the 19th of October, 1850. The original survey of Williams referred to in the patent and made a part of it was approved the 20th of June, 1851, by B. A. Putnam, Surveyor-General, as shown by exhibit on page 1027 of the record. The appellant alleged in the answer that the grant did not require any survey under the terms of the grant and laws of the United States; that under the proper construction of the laws of the United States the survey was approved by force and effect of the order of approval of B. A. Putnam, Surveyor-General, in 1851, as above referred to. The appellees insist that a survey and approval of the survey was necessary and that the only approval which could be recognized by the Courts of the United States was one made in 1894 and that prior to this approval of the survey in 1894 the land was not subject to taxation. These were Federal questions which depended upon the construction of the laws of the United States for their determination.

Appellees Insist in Their Bill That a Patent Was Necessary to Vest Title in Appellees or Those Under Whom They Claim Before the Land Became Subject to Taxation.

The bill in this case proceeds upon this theory of the necessity of the issue of a patent to make perfect and complete title of appellees or those under whom they claim before the land could be assessed for taxation or sold for non-payment of taxes. This question necessarily requires a consideration of the grant from Spain to Marcos and its terms and effect, of the treaty in regard to such grant, the action of the Land Commissioners, and the acts of Congress passed to carry out this treaty. The appellees insisted that no patent from the United States was necessary to perfect this title; that must be determined under the treaty, the terms of the grant and the terms of the acts of Congress, and directly present Federal questions requiring a construction of the treaty and the several acts of Congress applicable to this grant. The appellees in their brief filed on this motion state that their case is simply that of persons claiming under a patent from the United States. It will be seen that this is a case where the appellees claim title to this land as the descendants of the original grantee from Spain (Marcos) and as the descendants of Teresa Rodriguez, to whom, with her children, the grant was confirmed. The determination as to the taxable character of the land, the possession and right of possession of this land prior to the issue of the patent, the effect of the laws of the United States upon the taxable character of the land and the nature of the title of the United States in the land prior to the patent, are all involved in the case, and appellees' right to have these sales for taxes declared void and the deeds made in pursuance of the sale cancelled depend

upon the construction that this Court will put upon the grant the Treaty and the Acts of Congress, namely, as to whether or not a patent was necessary to issue from the United States to vest such title in the appellees as was subject to taxation.

Right of Possession by the United States From Date of Treaty to Issue of Patent.

It is alleged by the appellees in their bill and asserted by them in this case that until a patent issue the possession and right of possession of these lands vested in the United States under the treaty with Spain and the laws of the United States, and therefore the lands were not taxable, and also that the long years of possession by appellant and those under whom they claimed was of no force and effect to give them title by adverse possession or to bar the complainant's right of action by the Statute of Limitations and laches. The District Judge in his opinion (pp. 91-92 of R.) adopted this view. If the grant is a perfect grant under a proper construction of the grant and the treaty, or a proper construction of the Acts of Congress passed to carry into effect the treaty, taken in connection with the terms of the grant and the treaty, the right of possession is vested in Teresa Rodriguez and her heirs and assigns certainly from the date of the Act of Congress confirming this grant and the appellant and those under whom it claims could acquire title by adverse possession against the appellees and those under whom they

claim, and the appellees and those under whom they claim would also be barred of the right to maintain this action by the Statute of Limitation and their laches. The United States has no right of possession in this land after the confirmation of the grant and had no possession under the laws of the United States. All these questions depend on the construction that will be placed by this Court on the grant, on the treaty, and on the said Acts of Congress.

Act of Congress of March 3, A. D. 1807.

In the bill of complaint (p. 8 of R.) it is asserted by appellees that by the force and effect of the act of Congress of March 3, 1807, appellees and those under whom they claim were excluded from the possession of this land, and the United States had possession and the right of possession, and therefore the land was not taxable, and that appellant and those under whom it claims could acquire no title by adverse possession. It will be therefore necessary for this Court in determining the complainant's case made by its bill to construe this act of Congress. The District Judge in his opinion (p. 92 of R.) found and determined that prior to the issue of the patent the grantee, Teresa Rodriguez, and her representatives, could not have legally reduced this land to possession and in and by said ruling adopted the construction put by the complainants upon this act of March 3, 1807. This therefore is another Federal question directly raised by the bill and involved in this suit.

All of the Federal questions that we have above stated were raised by the appellees in the bill of complaint and directly passed upon and adopted by the District Judge in his opinion and were affirmed by the Court of Appeals in its judgment and decree appealed from herein. We submit that each and every of said matters make necessary a decision of these Federal questions in order to grant the relief prayed by the appellees in their bill of complaint and to establish their rights as set forth in their bill of complaint.

The Taxable Character of the Land by State Authorities During the Time Title Was Claimed by the United States Presents a Federal Question.

As stated in the opinion of the District Judge and affirmed by the United States Circuit Court of Appeals, the chief question in this case depends upon whether the property in question was subject to taxation by state authority prior to the issue of the patent by the United States in 1895.

Under all of the decisions of the United States Supreme Court, the taxable character of lands prior to the issue of a patent by the United States where title is claimed under the United States presents a Federal question which is subject to hearing in the United States Supreme Court. Consideration of some of the cases in this court in which these questions have been considered will disclose that they are treated as Federal questions and as rights arising under the laws of the United States. The case of *Hussman vs.*

Durham, 165 U. S. 145, was a writ of error from this court to the Supreme Court of the State of Iowa. Suit was brought by one Durham in the State District Court in Iowa to quiet his title as against the defendant holding tax title. Judgment was rendered in his favor in the District Court and affirmed by the Supreme Court of Iowa. A writ of error was then taken from the United States Supreme Court to the Supreme Court of Iowa. A motion was made to dismiss the writ of error, and this Court used the following language:

> "A motion to dismiss was submitted by the defendant in error, but as the Supreme Court of the State held that the equitable title apparently conveyed by the proceedings in the United States Land Office in 1858 was of no effect, and the tax titles based thereon of no validity, it is apparent that a right claimed under the authority of the United States was denied and, therefore, this Court has jurisdiction."

Wisconsin C. R. R. Co. vs. Price, 133 U. S. 496, was a writ of error from the United States Supreme Court to the Supreme Court of Wisconsin. A suit was brought in the State Court to enjoin the collection of State taxes upon land claimed under grants from the United States to the Railroad Company.

Carroll vs. Safford, 3 How. 441 (U. S. Supreme Court), was a bill filed in the United States Circuit Court by complainant residing in New York against the County Treasurer of a county in Michigan to enjoin the sale of land for taxes.

Witherspoon vs. Duncan, 4 Wall. 210, was a bill of equity filed in the State Court of Arkansas. It was affirmed on appeal by the Supreme Court of Arkansas and brought by a writ of error to the United States Supreme Court.

Railway Co. vs. Prescott, 16 Wall. 603, was a bill filed to quiet title against defendant claiming under tax title

and brought to United States Supreme Court by writ of error to the Supreme Court of Kansas.

In all of the above mentioned cases, the question of the taxable character of the property prior to the issue of a patent of the United States is treated as a Federal question.

In the case of *Spokane Falls, etc., Ry. vs. Ziegler*, 167 U. S. 65, action was brought in the State Court in the State of Washington and removed to the Circuit Court of United States. Judgment was rendered in favor of defendant in that court and the case was then taken by writ of error to the Circuit Court of Appeals of the Ninth Circuit and the judgment of the Circuit Court affirmed. The case was then taken to the United States Supreme Court by writ of error to the Circuit Court of Appeals. The plaintiffs claimed to be in possession of the lands under the laws of the United States and the defendant Railroad Company under the laws of the Territory of Washington. This Court held that this was a case of the plaintiff claiming title under the laws of the United States and the Railroad Company claiming by an act of Congress and, therefore, the Federal question was presented and the merits of the case were heard and determined.

See also *Doolan vs. Carr*, 125 U. S. 620. Jurisdiction was sustained on the ground that the controversy turned upon the validity of a patent from the United States under which plaintiff claimed title and which was denied by defendant.

See also

Cooke vs. Avery, 147 U. S. 375.

Appellees' Bill of Complaint States Rights Under the Treaty Between Spain and the United States and also Under the Laws of the United States, Particularly as to the Alleged Non-Taxable Character of the Lands in Question.

Appeal Lies from the United States Circuit Court of Appeals to United States Supreme Court Where Such Federal Questions are Involved.

The case of *Northern Pacific Ry. Co. vs. Soderberg,* 188 U. S. 526, sustains a right of appeal in an analogous case to the one above. In that case, this Court held as follows:

> "But to impress the attribute of finality upon a judgment of a circuit court of appeals it must appear that the original jurisdiction of the circuit court was dependent *entirely* upon adverse citizenship. That is not the case here. Plaintiff's bill does indeed set out a diversity of citizenship as one ground of jurisdiction, but as it appears that its title rests upon a proper interpretation of the Land Grant Act of 1864 as to the exception of non-mineral lands, there is another ground wholly independent of citizenship under that clause of Section 1 of the Act of 1888, 25 Stat. at L. 433, clothing the circuit court in the jurisdiction of all civil suits involving over $2,000 and arising under the constitution or laws of the United States."

A motion to dismiss the appeal was denied.

In the case of *U. S. Fidelity Co. vs. Bray,* 225 U. S. 205, 214, this Court sustained an appeal from a decree of the United States Circuit Court of Appeals in a case where the jurisdiction of a Circuit Court was invoked on the ground of diversity of citizenship and also under certain acts of Congress.

In the case of *Howard vs. U. S.*, 184 U. S. 676, 681, an appeal was sustained in suit brought upon a bond of a clerk as a suit arising under the laws of the United States, although jurisdiction by reason of citizenship was also attempted to be alleged.

See also

Spreckels Sugar Refining Co. vs. McLane, 192 U. S. 397, 405.

In the case of *Henningsen vs. U. S. Fid. & G. Co.*, 208 U. S. 404, it is held that, although diversity of citizenship was alleged in the bill, if the grounds of a suit and relief are based on statutes of the United States, which are necessarily elements of a decision for the lower courts, an appeal would lie to the United States Supreme Court to the United States Circuit Court of Appeals. The Court in its opinion (p. 4) uses the following language:

> "Diversity of citizenship was, it is true, alleged in the bills, but grounds of suit and relief were also based on the statutes of the United States, as from the discussion of the merits will be seen. Those statutes entered as elements into the decision of the Circuit Court of Appeals, and were necessary elements."

Where the cause of action is based on a statute of the United States, there is an appeal to the United States Supreme Court from the judgment of the Circuit Court of Appeals.

Chicago Junction Ry. Co. vs. Kane, 222 U. S. 223; *Union Pacific Ry. Co. vs. Harris*, 158 U. S. 326.

The right to a writ of error from the United States Supreme Court to United States Circuit Court of Appeals is sustained in the case of *Florida Central R. R. Co. vs. Bell*, 176 U. S. 321.

In this last named case a right under the laws of the United States giving jurisdiction was asserted in the Circuit Court and the United States Circuit Court of Appeals and it was held by the United States Supreme Court that a writ of error would lie in such case to review the judgment of the United States Circuit Court of Appeals. This Court, in several cases, has called attention to the language of the judiciary acts of Congress to the effect that the judgment of the United States Circuit Court of Appeals is not final except in cases where the jurisdiction depends *entirely* upon the opposite parties being citizens of different States and if there is other Federal jurisdiction arising out of questions and rights under the laws of the United States and treaties made with the United States, the right of appeal from the decree of the United States Circuit Court of Appeals exists although there may have been jurisdiction in the case by reason of adverse citizenship.

In addition to the cases cited above, see also

Sonnentheil vs. Moerlein Brewing Co., 172 U. S., 404, 405.

We insist that under all of the foregoing authorities the grounds on which the decree was made cancelling the deeds under which appellant claims title, as shown by the opinion of a District Court affirmed by the judgment of the United States Circuit Court of Appeals were rights claimed by the appellees under the treaty between Spain and the United States and under the laws of the United States and jurisdiction is, therefore, clear, giving a right of appeal from the decree of the United States Circuit Court of Appeals to this Court.

Mitchell, Governor, etc., of Florida vs. Furman, 180 U. S., 402. This case has been relied upon by appellees in their brief in support of the motion to dismiss. It is stated in their brief that the case at bar is exactly the converse of the Furman case above mentioned. It would seem, from an examination of the opinion, that the federal jurisdiction

and the jurisdiction of an appeal from the United States Circuit Court to the Supreme Court of United States was sustained. The Court held as follows:

> "The pleadings, the evidence, and the master's report and opinion considered, we think that rights under the treaty were so far set up and relied on as to give jurisdiction to the Circuit Court and to justify an appeal from its decree directly to this court."

The case of *Northern Pacific Ry. Co. vs. Soderberg*, 188 U. S. 526, above referred to, directly sustains this jurisdiction.

The Appellees Seek to Argue the Merits of the Case on this Motion.

In the brief of the appellees in support of this motion, they have discussed many questions involving the merits of the appeal and, among others, the character of the grant from Spain to Marcos, and cited authorities in reference to same, also their contentions as to the necessity of a survey of the grant and the amount of land included in a league square, also the nature of this patent. We submit that on this motion it is not proper to discuss the character of the title or the merits of the case, and we shall not undertake to cite authorities as to the nature of this grant or the necessity or want of necessity of a survey or patent or any other question involving the merits. This Court has held in a number of cases that it will not consider the merits of the case on a motion to dismiss. The bill of complaint in this case, all of the pleadings, the judgment and decision of the District Court and that of the United States Circuit Court of Appeals affirming the final decree of the District Court certainly disclose the necessity for considering a number of Federal questions in the determination of this case. Therefore, we insist that the jurisdiction in this Court to entertain this appeal clearly appears and that the motion should be denied.

Allegations of Appellees' Bill That They and Those Under Whom They Claim Were Excluded From Possession by the United States and That Appellant and Those Under Whom it Claims Could not Acquire Title by Adverse Possession Until Patent Issued Presents a Federal Question.

In the bill of complaint in this case in paragraphs Fifteenth, Seventeenth, Twenty-fourth and Thirty-sixth, the appellees assert that no right or title by adverse possession of these lands could be claimed by appellant and those under whom it claims, because appellees allege that no title or right of possession existed in the appellees or those under whom they claim prior to the issue of the patent and that, during that period, the United States had the title and right of possession and claimed the exclusive ownership of this land. The District Judge and the U. S. Court of Appeals adopted this view of the case (see page 92 of record) and overruled and denied all of the claims of title of the appellant under the Statutes of Limitation and under adverse possession. These claims of the appellees and their bill and this ruling of the Court and its opinion are based upon a construction of the right and title of the United States and the right and title of appellees under the laws of United States during the period from the ceding of the State of Florida by Spain to the United States to the date of the patent, June 26, 1895. This decision is based upon the contention of appellees that the grant was an inchoate title and was not confirmed as a full and perfect title by Act of 1828 and that a further survey and confirmation of the survey and a patent was necessary to vest title and right of possession in the appellees and those under whom they claim. These are rights claimed

under the treaty and under the laws of the United States and present for decision in this case Federal Questions which are also subject to review in this Honorable Court.

On account of the existence of all of the Federal questions above referred to and appearing in the appellees' bill of complaint and decided by a District Judge and affirmed by the United States Court of Appeals, we insist that an appeal lies in this case from the judgment and decree of the United States Circuit Court of Appeals to this Honorable Court. The construction contended for by appellees of the Grant and the various acts of Congress referred to in the bill, the treaty between the United States and Spain, the action of the United States Land Department and the decision of the Secretary of the Interior and the effect and construction of a patent from the United States are necessary to the case attempted to be made by the appellees. Unless the Court below had adopted the constructions insisted upon by appellees, their title in this suit could not and would not have been maintained and the appellant would have been held to have a valid title under the various sales of these lands for non-payment of taxes and through the many years of actual adverse possession under said tax deeds by appellant and those under whom it claimed title. The appellees' right to have these deeds canceled under which appellant claims title and the appellees' right as against the adverse possession of appellant and the effect of the Statutes of Limitation were all dependent on these claims made by appellees under the laws of the United States. We, therefore, submit that this motion to dismiss the appeal should be denied.

Solicitor and Counsel for Appellant.

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In the
Supreme Court of the United States

OCTOBER TERM, 1914

No. 135

WILSON CYPRESS COMPANY
Appellant

vs.

ENRIQUE DEL POZO Y MARCOS et al.,
Appellees

BRIEF FOR APPELLEES ON FINAL HEARING.

STATEMENT OF FACTS.

While Florida was a province of Spain a concession for five thousand five hundred acres of land was made by the Governor of East Florida, October 18th, A. D. 1815, to Miguel Marcos on his petition for the same, the petition describing the lands as "5,500 acres of land which are vacant on the two banks of a creek which comes from the west and discharges itself into the river St. Johns about two miles north of the lake known as Long Lake and the mouth of said creek called Big Spring"; and that the Grantee might be able to prove the concession Governor Estrada ordered that the necessary certificate be delivered to Marcos from the Secretary's office. The authority upon which the concession was made is recited to be "in virtue of the several royal orders," the laws in force in the province.

This concession was recognized as valid by the United States by its Commissioners to settle titles in East Florida and was recommended to Congress for confirmation to Teresa Rodriguez and her children, the heirs of Marcos. (Record, page 116.)

It was confirmed to the extent of a league square by the Act of Congress approved May 23rd, 1828 (4 Statutes at Large, 284).

At the Change of Flags the lands were unsegregated from the body of lands belonging to the King of Spain and ceded to the United States by the Treaty of 1818. They had never been surveyed.

See the petition of Teresa Rodriguez filed with the Commissioners, Vol. 4, American State Papers, page 471, Duff Green Ed. (page 697-705, Gale & Seaton's Ed.). Complainant's Exhibit No. —, pages 114 and 115 of record.

By the Act of May 23rd, 1828 (4 Statutes at Large, 284, Land Laws of the United States, 1882, Vol. 1, page 670), as construed by the Courts and by the Land Department until A. D. 1894, Congress granted the owners of this concession an option under Section 1 of said Act to accept the lands confirmed to them to the extent of a league square to be located by sectional lines within the bounds of the concession made by Estrada October 18th, A. D. 1815, if this location could be found, or under Section 6 of the Act to have their claim adjudicated by the Judge of the Superior Court of East Florida.

By Section 2 of said Act Congress provided that, except after adjudication by a Court under Section 6, no confirmation should be effectual until all over a league square of any larger grant or concession should have been released to the United States by the interested parties or by the guardian of minors interested; and that the excess over a league square of all grants not brought before the Courts for adjudication should be held to be and treated as public land. The material parts of the Act are printed on page 155 of this brief.

Neither Teresa Rodriguez nor the guardian of her children ever released to the United States the excess over a league square in the concession made by Estrada to Marcos, nor was any suit ever brought to adjudicate with the United States the

title to this concession, so that under Sections 2 and 12 of said Act and Section 8 of the Act of May 26th, 1830 (4 Stat. at Large, 405), all the estate of the confirmees became forfeited to the United States after May 26th, 1831. The lands then became a part of the public domain, subject to disposal by Congress or under the land laws of the United States, and also subject to a review by the head of the Land Department upon questions of law affecting them, or any equity therein of the original grantee under Spain. As this was but a first concession, which was without definite location, and the land claimed had never been segregated from the King's domain by survey, there never was any constitutional objection to this congressional action.

In December, A. D. 1847, the United States surveyed all the lands in township nineteen, south of range twenty-eight, as public lands, and May 15th, 1848, the Surveyor General of Florida approved of such survey, and the township map became an official record of the General Land Office.

See the township map of township nineteen, south of range twenty-nine east. Complainant's Exhibit No. 10, immediately following page 1026 of record, which is also marked on the bottom "Exhibit D." Certified to by Charles H. Parlin, Surveyor General, April 26th, 1907, as a copy of the official plat on file in his office.

Afterward the United States surveyed in this township the lands which in the petition for the grant by Spain are described as "5,500 acres of land, which are vacant on the two banks of a creek" which empties into the St. Johns River two miles north of Long Lake, though there is no such creek and no such lake in the township. Complainant's title is therefore based wholly upon the patent, and is derived from the United States and not from Spain.

On March 14th, 1872, the United States patented to the State of Florida as swamp lands about fifteen hundred acres surveyed in sections twelve, thirteen, fourteen and fifteen of said township nineteen.

See deed of release from the State to the United States. Complainant's Exhibit No. 2, pages 835-837 of record.

The patents to the State of Florida in A. D. 1872 of the

land by the State selected as swamp land describe the land by the sub-divisions of sections according to the survey approved May 15, A. D. 1848. No other survey was recognized in the Land Department until June 18th, 1894, when the survey as a private grant was approved (page 838 of the record).

The official plat of township nineteen did not show the Rodriguez claim. See letter of Surveyor General to the Commissioner of the General Land Office, page 848 of the record.

THIS LAND HELD TO BE PUBLIC LAND.

From the 26th day of May, 1831, until November, A. D. 1894, the United States held and treated these lands as part of its public domain. In A. D. 1890 complainants by their counsel applied to the Land Department of the United States to recognize and patent the lands confirmed to their ancestor, Teresa Rodriguez. This application was rejected by the Commissioner of the General Land Office for the reason that there had been a failure to comply with the terms of the Act of May 23rd, 1828, that officer holding that because of non-compliance with said act the concession to Marcos was never confirmed and consequently that the lands were a part of the public domain.

See Ruling of Commissioner.

Complainant's Exhibit No. 6, pages 844-846 of record.

An appeal from the Commissioner's ruling was taken, and on the 12th day of February, A. D. 1894, the Secretary of the Interior reversed the decision of the Commissioner of the General Land Office and directed that the concession to Marcos be recognized as confirmed by the Act of May 23rd, 1828, for the full five thousand five hundred acres conceded by Estrada to Marcos in 1815.

Prior to this decision of the Secretary a league square had been held by the Land Department as by the Superior Court in Florida and the Supreme Court of the United States to be four thousand four hundred and thirty-eight and 68-100 acres (4,438.68).

LEAGUE SQUARE AS DETERMINED BY THE LAND DEPARTMENT.

The Secretary decided that the league square prescribed in the Act of May 23, 1828, was the English league and contained six thousand two and 50-100 acres (6,002.50) instead of the Spanish league of four thousand four hundred twenty-eight and 4-10 (4,428.4) acres which, as stated by Mr. Justice Bradley in the case last cited, is the quantity which by the laws of Spain constitute a legal league and the league recognized in Texas and California by the Land Department of the United States, and found by the Superior Court of West Florida and this court as the standard of measure in use in the Floridas.

The result of this change of view by the Executive Department of what was the law was the recognition by the United States of the title of complainants to the lands in question and a re-conveyance by the State of Florida to the United States of that part of the grant to Marcos which had been patented to the State of Florida. (Pages 835-837 of the record.) On June 18th, 1894, a survey of the land as a private grant, made in 1851, was approved by the Surveyor General. (Record, page 841.) On June 26th, 1895, a patent was issued by the United States to the legal representatives of Teresa Rodriguez, reciting the survey and thus approving it, and complainants on the date last named became vested with a title to the lands in suit.

The patent, complainants' Exhibit 4, is printed on pages 838 to 843 of the record.

EVENTS BETWEEN A. D. 1831 AND A. D. 1895.

Intermediate the period allowed for selecting the league square confirmed to Marcos' widow by the Act of May 23d, 1828, to wit: May 26th, 1831, and the issuance of the patent for land in June, A. D. 1895, the following events pertaining to the lands in suit took place:

(A) On the fifth day of July, A. D. 1852, one Simpson, the Sheriff as ex-officio Tax Collector of Orange County, attempted to execute a deed of the whole tract (omitting, however, what lies in range twenty-nine) to one John Starke for alleged

unpaid taxes for the years A. D. 1845 to A. D. 1851, inclusive, and said alleged deed has been copied into the public records of Orange County in Deed Book D, page 277.

See testimony of B. M. Robinson, Clerk, page 229 of record.

Appellant's Exhibit No. 29, record pages 966-967.

This deed has no subscribing witnesses and was never acknowledged nor proved for record. It was made a part of the Bill, complainant's Exhibit A, pages 28-29 of record.

The lands levied upon and attempted to be conveyed in the alleged deed from Simpson, Tax Collector, to Starke are therein described as "a certain tract of land **supposed** to belong to Teresa Rodriguez, containing five thousand four hundred and eighty acres, and situated as follows, viz.: in section thirty-seven, township nineteen, range twenty-eight," and the estate attempted to be transferred is all the right, title and interest of Teresa Rodriguez **"or others"** in and to the tract of land above described.

Appellees produced before the master the **duplicate original tax rolls** of Orange county for the years 1845 to 1851 (with the exception of the year A. D. 1847, which could not be found) and proved that no taxes were assessed against the lands attempted to be sold nor against Teresa Rodriguez for any of said years. It took thirty-seven pages of testimony of a perverse witness to establish it, but it was completely established by **original** records, on file in the office of the Comptroller of the State of Florida. (Record, pages 155-192.)

SECOND TAX DEED.

(B) April 23rd, A. D. 1872, an alleged tax deed was subscribed by one Robert C. Partin, **as Tax Collector** of Orange county, in favor of one William Mills. In this alleged deed the lands are described as sections nine, ten, eleven, twelve, thirteen, fourteen, fifteen and sixteen, and a part of sections one, two, three, four, five, eight, seventeen, twenty-one, twenty-two, twenty-three and twenty-four of township nineteen, range twenty-eight east, without designating any particular part of subdivision of the last enumerated sections, "known as the

Grant of Teresa Rodriguez." None of the parts of sections lying in range twenty-nine are included in the alleged deed.

There is no statute of Florida which authorized the Tax Collector to make a deed. As shown later in this brief by the law in force in A. D. 1871, sales were required to be made by the County Treasurer and deed issued by the County Clerk—Sections 62-74, Chapter 1713, Laws of Florida, approved June 24, 1869.

This alleged deed purports to have been made upon a sale in March, 1871, for non-payment of the taxes for the years A. D. 1867, 1868 and 1869, upon an alleged execution against these lands as belonging to John Starke.

Appellant's Exhibit No. 4, pages 868-871 of record.

Exhibit B of the Bill, pages 31 and 32 of the record.

Under this Tax Deed to Mills, one Powell entered on section nine and section sixteen, built a mill on section nine and planted an orange grove and made substantial improvements. About one acre in section sixteen was enclosed; about seven or eight acres of section nine were also enclosed. (Testimony of William Slade, page 276 of the record.) This occupancy of Powell and those claiming under him of some part of one or more of the eight several sections of six hundred and forty acres each and eleven parts of sections into which the lands patented as the grant to Marcos had been surveyed by the United States as public lands, continued for several years, but all such occupancy was abandoned prior to or about the time of the freeze in A. D. 1894.

Pages 345-352, 406-545, 276, 236, 239, 240, 241, 242, 243, 244, 245, 254, 257, 263, 264, 265, 266, 267, 268, 271, 274, 277, 278, 279, 280, 283, 284, 286, 292, 297, 303, 306, 308, 311, 313, 323, 360, 361, 367, 368, 371, 373, 374, 375, 411, 443 and 444 of the record.)

CONVEYANCES UNDER TAX DEED.

(C) By various conveyances, always by sections and parts of sections as surveyed by the United States as public lands, a color of title to the lands which are situate in township nineteen, south of range twenty-eight east, except sixty acres of

lands in suit, was made in the Florida Land and Colonization Company, an English company, and on the 3rd day of May, A. D. 1900, this company made a deed to the defendant of the lands in township nineteen, ranges twenty-eight and twenty-nine east, though it had no paper title to the land in range twenty-nine. This deed in form is a special warranty, in legal effect a mere quit claim deed.

See appellees Exhibit C, page 32-33 of record.

From February, 1896, to 1898 the appellant had been negotiating with appellees' attorney for the purchase of 1,600 acres of the grant, but evidently made what it deemed a better bargain with the holder of the tax title.

See letters of Henry S. Wilson, pages 833 and 834 of the record, the second letter written on the letter heads of the appellant company.

AFTER A. D. 1900.

(E) There is testimony that the Florida Colonization Company and the defendant had a watchman from time to time riding over the lands in suit and at times camping on them.

About A. D. 1904 to 1906, (pages 437, 554, 555, 564, 566, 723 of the record), the defendant built a cabin on section twenty-one, about three chains south of the grant line, on land which was patented in A. D. 1883, to one Drawdy as a homestead by the United States (page 861 of the record).

The defendant intended to build the cabin on the grant and thus evidence an occupancy of the tract, as part of its plan to secure a title to appellees' land under color of title from the colonization company, as we shall show later in this brief.

(F) Immediately after the issuance of the patent to complainants, Mr. Martin, their attorney, to whom the patent was delivered, came to Florida and entered upon the lands, claiming title on behalf of his clients, and finding the lands vacant, wild and unoccupied, posted notices of ownership in the names of the heirs of Teresa Rodriguez warning against trespassing, and tendered to the agent of the Colonization Company, then claiming ownership, the money to pay all taxes paid, etc.

Deposition of Martin, pages 825 to 833 of the record.
Testimony of J. P. Owen, pages 541-544 of record.
See also pages 304-306, 826-827 of the record.

(G) Appellees brought suit against the appellant in the Circuit Court of the United States on the Chancery side of the Court, which was dismissed **without prejudice** for failure to take testimony within the time allowed. The bill was filed June 24th, 1902, and was dismissed without prejudice April 4th, 1904, the Court having refused to further extend time to take testimony (pages 1032 to 1034 of the record).

The parties were substantially identical and the relief prayed was similar to that prayed in this suit.

On the 2nd of May, A. D. 1907, this suit to remove cloud on title was instituted. The decree was rendered January 13th, 1912 (page 102 of the record), and was affirmed by the Circuit Court of Appeals on the 4th day of February, A. D. 1913. (Page 1040 of the record.) An appeal to this court was allowed February 28th, 1913. (Page 1050 of the record.)

It will be observed that the grant as surveyed includes a part of section six, seven, eighteen and nineteen of township nineteen, south of range twenty-nine east, yet this part of the grant has been omitted in all the deeds which precede the deed to appellant (pages 842, 29, 30, 871, 874, 896 of the record).

It is further to be observed that, except the tax deed to John Starke, all the deeds in the alleged chain of the title down to the appellant's deed describe this land by the use of the section numbers under 37, which are used only in the description of public lands, and not by the section numbers 37 and upwards, which are used for private land claims as surveyed by the United States (pages 30, 871, 874, 878, 883, 893, 896 of the record). In other words, each of these deeds purport to convey not one tract of land but several complete tracts of lands, each of 640 acres or less.

When the evidence developed that appellant had built its cabin on the Drawdy land and had failed to put it on the grant, counsel were quick to realize appellant's position, and strove desperately to break down the proof made.

Appellant had put in evidence the plat of the survey of sec-

tion 37 in township nineteen as its Exhibit No. 1, page 377 of the record, which appears as appellant's Exhibit No. 37 on page 1029 of the record, filed February 11th, 1911.

It filed as Exhibit 27 on August 24th, 1909, the field notes of the United States survey of the grant—pages 935 to 937 of the record.

By the plat and field notes the south line of the grant is five chains and thirty-five links south of the north line of sections twenty and twenty-one of the public survey, and seventy-four chains and fifty-five links north of the south line of said sections twenty and twenty-one (pages 1027 and 852 of the record). By the plat it appears the west line of the grant as patented measures 168 chains, being two chains and fifty links in section 5; eighty chains and ten links in section 8; eighty chains and five links in section 17, and five chains and thirty-five links in section 20. The plat and the field notes agree. See page 935 of the record where the measurements of the west line are set out and the southwest corner of the grant set at 168 chains from its northwest corner.

[NOTE.—As printed on page 935 of the Record the distance to the point where the west line of the grant intersects the north line of section 20 is, by error, printed 62.65 chains. The correct distance as shown by the Field Notes set out in the Patent, page 979 of the Records, is 162.65 chains.]

Appellant was estopped by its own evidence from denying that the land claimed and patented to the legal representatives of Teresa Rodriguez was not located according to the official plat and field notes by it filed.

It did, however, at once put its man Owens into the woods with two surveyors, to get evidence during the trial to contradict the plat and field notes, and it has filed on page 1030 of the record a sketch showing a pond, a run and the cabin drawn to show that, as located on the ground by natural objects described in the United States field notes, the **south** line of appellees' land runs on a line which is nine chains and fifty-seven links south of the north line of section twenty-one, and seventy chains and twelve links north of the south line of section twenty-one of the public surveys.

Appellant sought to establish and maintain an adverse possession of appellees' lands by an occupancy of land which

appellees do not claim, **on the contrary insist is not a part of their grant,** and this by constructive adverse possession of over five thousand acres by the occupancy of 150 square feet, the space occupied by a ten by twelve cabin, without window or chimney, standing on land uncleared and without inclosure (pages 324, 561, 566, 567 of the record).

FRAME OF THE BILL.

The Court's attention is called to the frame of the bill.

There being such a large number of descendants of the original grantee the bill was framed that a few might prosecute for all.

While wills were made, it was found that all of these wills were according to the Spanish law and not valid to devise land in Florida, hence all the living descendants of Miguel Marcos and Teresa Rodriguez were interested parties.

Full disclosure of who were such descendants and of their several interests was made (pages 3 to 6 of the record). This benefit given appellant was sought to be turned against appellees by the demand made in the answer for strict proof. To make this proof from the Spanish records it was found would cost many thousand dollars. To avoid this great and unnecessary expense, it was determined after consideration of the law controlling this case to make full proof of the pedigree of one or more of the complainants who were descended from each of three children of Miguel Marcos, the original grantee from Spain, and his wife, Teresa Rodriguez, tracing blood and title down from each of said three children to enough of complainants to sue for all. This was done from the church records in St. Augustine, Florida, and in the island of Cuba (pages 984 to 1024, 1036 and 1037 of the record).

At the hearing appellees filed a consent that a decree be entered in favor of those of the complainants who had fully proved their pedigree, such decree to be for the use and benefit of all the complainants living at the date of the decree and the legal representatives of them then dead (page 72 of the record). Without striking out other complainants, the decree finds eight named complainants for themselves and as repre-

sentatives of heirs of Teresa Rodriguez entitled to the relief prayed in the bill, and decrees that appellant has no estate in the land granted the ancestor of appellees (page 97 of the record).

The benefit of the decree necessarily enures to all the complainants named in the bill.

CONTENTIONS OF THE PARTIES.

To comprehend the contentions of the parties on this appeal it is necessary to understand their several contentions in the trial Court.

In that Court appellees contended:

(1) That the grant to Marcos in A. D. 1815 was but a "concession," or permit to occupy and have surveyed and, after the ten-year settlement required by the law of the Province of Florida then in force, to obtain a complete title, or royal title, as it was called.

The form of the first concession by the Spanish law and practice differs from a complete title as much as a bond for title differs from a deed in fee, under the English practice.

(2) That under the Act of May 23rd, 1828, as construed by the Courts and the Land Department until A. D. 1894, the favorable recommendation made by the Land Commissioners in December, A. D. 1825, and their finding that the concession to Marcos was valid, became without effect or was rendered nugatory by reason of the failure of the beneficiaries to either accept a tract of four thousand four hundred and thirty-eight (4,438) acres within the bounds of the concession for five thousand five hundred acres, or to bring their claim for five thousand five hundred acres before the Superior Court of East Florida, and the grant itself containing no boundaries, the confirmation was a recognition only of a claim for 5,500 acres out of the public domain to be thereafter located by the Land Department of the United States.

(3) That by the decison of the Supreme Court and the rulings of the Land Department until the decision in this case in A. D. 1894, a league square in Florida land grants was four thousand four hundred and thirty-eight (4,438) acres.

(4) That after May 26, 1831, the lands granted to Marcos, even if they could be identified, or had been located by a survey, were by the Land Department thereafter held to be a part of the public domain, free from all claims under the grant by Spain.

(5) That the lands patented are lands surveyed at a place other than described in the grant and were public lands until the patent issued, because these particular lands had not been granted by Spain prior to the treaty of cession.

(6) That from about A. D. 1831 the United States treated the lands as part of the public domain. This is evidenced by the survey of the same into sections of six hundred and forty acres each and by patenting about one thousand six hundred (1,600) acres thereof as subdivisions of such sections to the State of Florida under the Swamp Land Act, in A. D. 1872.

(7) That the legal representatives of Teresa Rodriguez were not entitled to the possession of the lands patented or of the lands granted to Marcos if they could be identified, and **seizin was in the United States as by office found,** by the ruling of the Land Department, and its acts respecting said lands.

(8) That during all the period from A. D. 1831 until A. D. 1895 the United States being in possession of the lands claiming them, adverse possession as against the heirs of Teresa Rodriguez was not had by any occupancy of these lands or parts thereof, nor were the lands or any part thereof subject to taxation by the State of Florida. This is emphasized by the fact that the State of Florida took title to about 1,600 acres thereof under patents from the United States, and held title thereto from A. D. 1872 to A. D. 1895 (page 835 of the record). The tax deed under which appellant claims is dated April 23rd, 1872. (Page 868 of the record.)

(9) That all the acts of occupancy had upon these lands prior to June, A. D. 1895, were trespasses against the right and title of the United States, since the occupants claimed title under the State of Florida, hostile to the claims of the United States.

(10) That all the acts of so-called possession had since June, 1895, do not amount to an adverse possession as defined by the

laws of Florida, even if the testimony of defendants be undisputed and given its broadest scope.

(11) That by the admissions of appellant on the record, and by undisputed proof the cabin built by appellant, by the alleged occupancy of which it bases its alleged adverse possession of the lands sued for (except 60 acres), is not located on the lands patented to the legal representatives of Teresa Rodriguez and which appellees herein claim.

(12) That the appellant having no estate in the lands patented to the legal representatives of Teresa Rodriguez, suit to remove cloud could properly be prosecuted by a few for the benefit of the whole class, and only prima facie proof of title by descent in appellees was required.

(13) That the record clearly shows that appellant deliberately made its choice between appellee's title and the tax title, and is estopped to set up the defense of laches on the part of appellees.

(14) That appellant has recognized substantially all appellees as owners under the patent and is estopped to now dispute that they are the legal representatives of Teresa Rodriguez.

APPELLANT'S CONTENTION.

The appellant contended in the trial Court and in the Circuit Court of Appeals:

(1) That the concession to Marcos was a present title in fee to the particular lands described in the patent from the United States.

(2) That Marcos' title was divested by a tax sale under the laws of the State of Florida during the period the United States was treating the lands as public lands.

(3) That whether or not the tax title divested the title of Marcos yet that title was barred from assertion by appellees or a new title was conferred on appellant by adverse possession for the statutory period under color of title to all the lands granted to Marcos situated in township nineteen, south of range twenty-eight east, except a small area not claimed by appellant.

(4) That all the living persons who constitute the legal representatives of Teresa Rodriguez must be joined as parties

to have cancelled of record the claim of appellant, and all must make strict proof of their right to prosecute by tracing their pedigree back to the grantee of Spain.

(5) That appellees have forfeited their rights by not proceeding against the United States prior to A. D. 1889, and by delay since the issuance of their patent.

THE ARGUMENT.

For a better understanding of the questions sought to be reviewed the thirty-eight assignments of error filed here will be grouped as follows:

Nos. 1, 2, 3 and 38, relating to alleged errors by the Circuit Court of Appeals; No. 4, alleging error with respect to proof of the heirship of Appellees; Nos. 5 and 37, with respect to the right of a part of Appellees to maintain suit in their representative capacity; Nos. 6 to 18, as to the validity of the tax deeds and the title to the land prior to the issuance of the patent in A. D. 1895; No. 19, as to alleged error in the decree holding that the grant was not a complete title; Nos. 20, 22, 23, 24 and 25, as to alleged error in holding that the United States never considered the lands described in the patent private property before the issuance of the patent; No. 21, because the decree held that the survey of lands as private property was not approved until June 18th, 1894; Nos. 26 and 27, because the decree held Appellees were not barred by laches; Nos. 28 and 29, because the decree found the Appellant had notice of Appellees' title; Nos. 30 and 31, as to the alleged error in receiving evidence to establish the pedigree of Appellees; Nos. 32, 33, 34 35, setting up that equity was without jurisdiction; No. 36, as to the alleged want of parties Defendant.

It will be noted that except the first three and the last assignment the errors here assigned are identical with the errors assigned in the Circuit Court of Appeals, pages 102 to 110 and 1041 to 1050 of the record.

As the foundation of Appellants' case rests on its contention that the land described in the patent issued in 1895 was subject to taxation after Florida became a State, we disregard the order of assignments of error and consider first, Assignments Nos. 6

to 18 inclusive, which relate to alleged errors of the District Court and the decree of the Circuit Court of Appeals, wherein that Court found and decreed that the title of the lands remained in the United States until the issuance of the patent, "therefore they were not taxable by the State of Florida at the several times they were listed for taxes and sold for non-payment thereof."

THE GRANT TO MARCOS A FIRST CONCESSION.

It is so apparent that the concession made to Marcos in 1815 was but the first concession and a mere permit to occupy and obtain a complete or Royal Title to 5,500 acres of land upon compliance with the requirements of the Spanish law, that the Court's time would not be consumed in discussion of the evidence to prove that fact were it not that Appellant's whole case is based upon the assumption of its counsel that the grant to Marcos was a complete and perfect grant, excepted from the second article of the treaty between the United States and Spain because at the date of cession it was private property.

There are certain well established principles which govern in determining whether the title papers delivered to Marcos constitute an inchoate title, the first concession, or a title in fee, called a complete or Royal Title.

The laws and customs of Spain, judicially noticed by this Court, have been determined and announced in so many cases before this Court that they are well settled.

To enable the Court to determine the character of the title papers given to Marcos the meaning of certain legal phrases according to the Spanish law and certain governing principles as found and determined by this Court are set out, to-wit:

The laws, usages and customs of Spain must be applied in determining the rights of property held under Spanish title.

United States vs. Kingsley, 12 Peters 476, text 485.

Escriche defines the word "concession" as whatever is granted as favor or reward, as the privilege granted by the prince.

The general word grant may comprehend both the incipient

and the complete title. The greater number of those in Florida appear to have been of the first described.

United States vs. Clark, 8 Peters, text 450.

A grant under the Spanish law meant not a perfect title but an incipient right which, when surveyed, required confirmation by the Governor.

United States vs. Hanson, 16 Peters 200; 10 L. Ed. 936.

By the confirmation of a Spanish Grant (concession) the United States recognized such grant, but such recognition extended only to the boundaries the grant itself furnished.

McDonough vs. Millaudon, 3 How., text 716.

Where the description of the land granted is vague and indefinite and there has been no official survey to give it a certain location the grant creates no right of private property in any particular parcel of land.

United States vs. King, 3 Howard, text 786.

No Court can treat a claim as conferring a right to a specific tract until its boundaries are capable of identification or have been established by a survey.

Slidell vs. Granjean, 111 U. S. 412, 28 L. Ed., 330.

Where the grant of land by a foreign government is one of quantity, only requiring action of the government to give it location, this is essential to perfect the equitable title of the grantee. Such grant is evidence of a right to so much land, to be afterward laid off by the official authority.

Teschmaher vs. Thompson, 18 Cal. 11, 79 Am. Dec., text 157.

Where a grant was unlocated under the former government the right to determine the location passed with the cession of the country to the United States like all other public rights. Ib.

The patent for land issued upon a foreign grant for a specific quantity of land to be afterward located by the authority of the granting government is evidence that the grantee possessed at the date of the cession a right to so much land, to be afterward laid off by official authority, and that the government of the United States has through its appropriate departments made the appropriation and thereby attached the title to the tract as surveyed. Ib.

Third parties against whose interest the action of the gov-

ernment in appropriating the land patented and the patent is not conclusive are those whose title accrued before the governments rights under the treaty attached. Ib.

FORM OF TITLE IN FULL PROPERTY.

"There is a peculiarity in the phraseology of a royal title; in all the grants of this nature the legal right to grant the lands is asserted." (See appellant's Exhibit No. 31, page 972 of the record.)

This form of conveyance, the form invariably used by the King's delegate in granting the fee to lands in East Florida, is a distinguishing feature of the royal title.

Mr. Chief Justice Marshall quotes the first clause of the formula used in a complete grant in the United States vs. Huertas, 8 Peters, text page 489. It is:

"I have therefore granted and by these presents do grant, in the name of His Majesty (whose royal justice I administer), to the said Don Juan Huertas, his heirs and successors, the said 15,000 acres of land, in absolute property, etc."

The same learned Chief Justice also quotes the same formula in United States vs. Clark, reported in 8 Peters 436, the language there being,

"In the name of His Majesty I do grant to the said George Clark, the aforementioned four miles square of land, to himself, his heirs and his successors in absolute property and I do issue by these presents a competent title whereby I separate the royal domain from the right and dominion it had to said lands."

The first concession, the grant thereon, and the complete or royal title, "the petition, decree and grant" are printed at length on pages 439-442. They are too long to print, but the special attention of the Court is directed to the form of the royal title which is the form universally used where the legal estate is transferred by the Spanish Government both in Florida and in the Louisiana territory.

According to the practice under Spain this decree granting the land is in most cases indorsed upon the petition. The complete or royal title is a document by itself.

The concession was often a mere part of the request, without other description than the petition contained.

Yontz vs. United States, 23 Howard 495.

As late as 1900 this Court had occasion to review the practice governing grants of lands in East Florida under Spain and determine the form of grant required to convey an absolute title.

The practice is set out in the opinion rendered by Mr. Chief Justice Fuller in Mitchell vs. Furman, 180 U. S. 402, text 430 to 433.

After stating that the grant made to Fish which the Master in that case held to be a complete title, confirmed by the eighth article of the treaty, did not appear to the Court to constitute a grant in fee because the grant did not run in the name of the king, did not purport to make the grant as in absolute property, did not assert the legal right to make such a grant and because the terms of the title papers were consistent with a concession which required a title in form to be subsequently issued. The learned Chief Justice cites from the report of the land commissioners printed in this record on page 970 et seq., the following language:

"A royal title is the highest order of title known by any law, usage or principle, in the province of East Florida. Titles of this description were designed to convey the fee simple to the grantee; they were usually made by the acting Governors of the province in the name of the King; they recited the grant to be 'in perpetuity,' and also the specific metes and bounds of the land * * *

"This title may be said to correspond in character with that of a patent issued by our government. Concessions without condition are understood to differ from a royal title only in this, that most of the latter recite the metes and bounds, whereas the unconditional concession, although definite in quantity and location of the land, is still subject to a survey; which, when made, was followed up by maturing the concession by a royal title * * * There is also a peculiarity in the phraseology of a royal title in all the grants of this nature the legal right to grant the lands is asserted."

The language of the grant in the case at bar is:

"Let there be granted to the interested, on the terms which he solicits, the lands indicated in the memorial, in virtue of the several royal orders which authorized to that effect: and that he may be able to prove **this concession** in any event, let the necessary **certificate** be delivered to him from **the Secretary's office."** "Estrada," page 116 of the record.

The language used in the grant to Elizabeth Wiggins is:

"The tract which the interested party solicits is granted to her; without prejudice to a third party; and for the security thereof, let a certified copy of this instance and decree be issued to her from the Secretary's office." "Estrada."

United States vs. Wiggins, 14 Peters, text 345.

Allowing for variance in translations the decree in both cases is identical.

The Spanish laws and customs are at length set out in the brief for the United States and in the opinion rendered in that case and it was there held: (a) That the grant was a mere concession, carrying with it the condition of ten years' cultivation and occupation before a royal title or legal title could be obtained. (b) That under the laws of Spain the grantee took no title, and that none could be claimed from the United States as successors to the rights and obligations of Spain.

United States vs. Wiggins, 14 Peters, text 346 et seq., 348 et seq., page 350.

In that case Mr. Chief Justice Marshall, speaking for this Court, says:

"He (the witness Alvarez) and others establish beyond controversy that persons wishing grants from the Spanish Government presented a memorial to the Governor and he decreed on the memorial in the form pursued in Mrs. Wiggins' case; that the decree of the Governor was filed in the Secretary's office, and constantly retained there unless in cases where a royal title was ordered to be issued, when the decree was transferred to the Escribano's office."

14 Peters, text 345-346.

PETITION FOR GRANT IN ABSOLUTE PROPERTY.

The case last cited is a complete answer to Appellant's contention found on pages 47 and 48 of counsel's brief on final hearing that the grant to Marcos was a grant in absolute property, because granted "on terms which he solicits." All counsel say as to Marcos' petition and the Governor's decree may be conceded, yet the legal title remained in the King until the full title issued from the office of the Escribano.

A further answer, however, is contained in the reports of this Court in the two cases of United States vs. Miranda, 16 Peters, 153, and United States vs. Lawton, 5 How. 10.

In the Miranda case the grant is almost a counterpart of the case at bar. Miranda petitioned the governor "to grant him in absolute property" eight leagues of land. Governor White decreed on the petition, "I grant to him in the terms which he solicits the said quantity of land in the place which he indicates."

In the Lawton case the petition of Darley asks the governor to grant to him in absolute property six miles square at the place called Dunns Lake. Upon this petition the governor decreed, "There is granted to him in absolute property the six miles square which he solicits." In both cases the evidence of the grant was the same as the evidence of the Marcos Grant, a copy from the Secretary's office. Both the Miranda and Darley concessions were held by this Court to convey no title to the grantees.

As the brief of counsel is insistent that Estrada's decree on the petition of Marcos was "a perfect grant in itself of complete title," the Court will indulge counsel in printing on page 154 of this brief an excerpt from the testimony of Mr. Alvarez cited by Mr. Chief Justice Marshall in the Wiggins case, from which the Court may see what was the practice while Spain held the Floridas and the form of a title in full property.

MARCOS AND WIGGINS GRANTS SAME IN CHARACTER.

If it be said that the Wiggins Grant was made under the royal order of 1790 while the grant to Marcos was under the

royal order of 1815, we reply:

(a) That the petition of Teresa Rodriguez for confirmation recites the grant to have been made "in virtue of various royal orders."

(b) The grant by Estrada recites it made "in virtue of the several royal orders which authorize to that effect."

(c) That the grant to Marcos was not made under the order of 1815 because that order limited the donations to "a certain quantity of land as established by regulation in this province, agreeably to the number of persons composing each family," and restricted the donations to officers and soldiers of the "third battalion of Cuba."

2 White Recomp., p. 279-280.

United States vs. Perchman, 7 Peters, text 95 et seq.

United States vs. Clark, 8 Peters, text 462.

Marcos is not shown to have belonged to the third battalion of Cuba, nor to have had such number of family or slaves as would entitle him to five thousand five hundred acres of land.

The condition of settlement and application for a complete title upon proof thereof was imposed by Spanish law and custom upon all concessions, concessions for services included.

But if this grant was an exception, as claimed by appellant, yet the royal title must have been issued under Spanish rule before January 24, 1818, to vest in Marcos a legal estate. In all cases where no royal title had issued prior to the cession the fee passed to the United States.

It has been the policy of Congress, not only in respect to the Florida claims but also in the Louisiana claims, to require in addition to the first concession, an official survey and formal grant made under the former sovereign, to invest the claimant with a title as against the United States.

United States vs. Acosta, 1 Howard, page 24—11 L. Ed. 34.

United States vs. Lawton, 5 Howard, page 10—12 L. Ed. 35.

United States vs. Forbes, 15 Peters, page 173—10 L. Ed., 705.

United States vs. Miranda, 16 Peters, page 153—10 L. Ed., 922-923.
United States vs. Delespin, 15 Peters, page 335—10 L. Ed., 758.
Fremont vs. United States, 17 Howard, page 442—15 L. Ed., 245.
De la Croix vs. Chamberlain, 12 Wheaton, page 599—6 L. Ed., 742.
United States vs. King, 3 Howard, page 773-787—11 L. Ed., 830.
Menard vs. Massey, 8 Howard, page 294—12 L. Ed., 1090.
Maguire vs. Tyler, 8 Wallace, page 650—19 L. Ed., 320.
D'Autrive vs. United States, 101 U. S., page 700—25 L. Ed., 871.
United States vs. Wiggins, 14 Peters, text 349.

In the Wiggins case the Court says the Florida claims were confirmed in accordance with the act for confirmation of claims in Missouri which required the issuance of a patent to the confirmee, therefore as to all grants on which the royal title had not issued (inchoate claims) the patent from the United States is the transfer of the fee to the grantee.

TABLE OF CASES REPORTED BY THE COMMISSIONERS.

Appellant put in evidence the table of cases contained in the Land Commissioner's report of December 31, 1825. It is printed on page 969 of the record.

The object of this evidence was to show that the grant to Marcos was found to be a royal title.

It will be observed that the last six cases in the table numbered 21 to 26 are separated from the first twenty cases; that the column under "date of the patent or royal title" is blank as also under the column headed "Dates of Survey," but besides what appears upon the face of this table which is printed in Volume 3, American State Papers, page 571, Gale and Seaton's

edition, the following facts are found in that set of volumes and the reports of this Court:

On pages 697 to 709 of Volume 3, American State Papers, it appears that these cases are numbered from one to six, that number twenty-four, or 4d, is not reported; that numbers twenty-three and twenty-four, or 3c and 4d, is the same grant made to Sallas, who sold it twice in A. D. 1821—in September to Strong and in December to Simonton; that numbers twenty-five and twenty-six, or 5e and 6f, is the same grant made to Arrambede, who sold it twice—once in 1817 to Archibald Clarke and again in 1820 to George Clarke.

From the Supreme Court Reports it appears that the grant to Arrambede was declared void.

United States vs. Delespine, 15 Peters, 319.

The grant to Jessie Fish was a first concession wanting the royal title and the lands granted became public lands of the United States from failure of the grantees to avail themselves of their right to locate a league square within the bounds of their concession or to proceed in the Superior Court of Florida for confirmation thereof, a case on all fours with the claim of Marcos.

Mitchell vs. Furman, 180 U. S., 402.

The table of this report is therefore no evidence that the Commissioners deemed the grant to Marcos was founded on a royal title.

PERCHMAN'S CASE.

It is true that the late Chief Justice Fuller, in the case reported in 180 U. S., 402, did include the Perchman case with the Arredondo case and the Clark case as instances of a complete or perfect title brought into Court under the Act of May 23, 1828. Counsel, on page 59 of their brief, seek to sustain their contention that the grant to Marcos was a complete title by reference to this statement of the late Chief Justice.

An examination of the case of Perchman reported in 7 Peters, 51, will disclose that Perchman's title rested upon a first concession without the issuance of a royal or complete title, but however that may be, it differs wholly from the case at bar in

that after receipt of his first concession out of the Secretary's Office, Perchman promptly petitioned the government to have a survey made, which petition was granted December 31, 1815, and a survey returned on the 20th of August, 1819, with a plat by which Perchman's lands were segregated from the Royal Domain. It further appears that the form of the grant to Perchman differs from the grant to Marcos in that Governor Estrada decreed upon Perchman's petition in different terms from those used in the indorsement upon Marcos' petition.

Upon the Perchman petition the indorsement reads:

"In consideration of the provisions of the royal order under the date of March 29th last, which is referred to, I do grant to him in absolute property the 2,000 acres of land in the place which he indicates, for the attainment of which let a certified copy of this petition and decree be issued to him, **which documents** will at all events **serve him as a title in form.**"

Further, Perchman was by name mentioned by the Governor as a person entitled to the King's bounty.

7 Peters, text 97.

It matters not under what law the grant to Marcos was made. The grant recites that the concession was filed in the Secretary's Office and it is well established that under the Spanish practice this office was the place of custody of first concessions, that the royal title issued from the office of the Escribano and were in the form set out in the title to McQueen, which is printed on page 154 of this brief and is found printed on page 280 of Volume 8, American State Papers, to which this Court is referred, and which, with what has been printed in those volumes and in the decisions of this Court with reference to the form of a complete title is a conclusive answer to appellant's contention that the grant to Marcos was in form a complete title.

SPANISH GRANTS—TITLES OF PROPRIETORSHIP.

That the grant made to Marcos like the grant to Wiggins was a mere concession to be completed by a title in form before it had any validity against Spain or the United States, its successor, is further proved by the documents set out in Vol. 5,

American State Papers, page 747 **et seq.** (Gales and Seaton's Ed.), as also in 2 White's Recompilation, pages 272 to 291; cited in 8 Peters, page 459 **et seq.**, where the following historical facts are recited. The Court's attention is specially directed to the more full recital printed in the two volumes cited in the last paragraph above.

In 1818 the King granted to the Duke of Alagon a large part of East Florida; Alagon sent to Florida his attorney, Garrido, who asked the Governor to furnish him an explanation of the donations of lands that had been made. The Governor ordered the Escribano to certify the conditions under which lands had been granted, and to furnish a copy of the titles of proprietorship of each class (a concession and a royal title). The title to McQueen is given as a type of the perfect or complete title and the Attorney General, Savedra, in reporting to the Governor, says:

"Titles of proprietorship should be considered in the same class to which they refer—those who have obtained such as were delivered according to the form, page 20 (referring to the Attorney General's report), to the late John McQueen, have acquired irrevocably the right of property, because they have had granted to them the useful and direct dominion of the lands after the ten years of possession, and compliance with the conditions upon which the grant was made, appearing from the copy, page 25, so that when the absolute titles have been delivered, they confer on the possessors the power to sell, exchange, transfer and alienate at their will, as well as by themselves as their heirs and successors, without a reservation by the Crown, direct dominion or anything else whatever.

"Those who having obtained a concession of lands, have not cultivated them from the time they were granted, can have no right to them; much less will they have the title of absolute property, which is delivered after ten years' possession, to establish which must be preceded by formal proof of compliance with the conditions. For this reason there is so marked a difference between the title of proprietorship and simple certificate issued by the Secretary of the Government, when the concession of lands is made, that the former enjoy an irrevocable right, and (but) the certificates are of no value nor effect unless

the prescribed conditions have been complied with, otherwise such papers deserve no regard, nor can the grantees by means of them claim any right to the lands granted, which should now be considered vacant."

2 White's Recompilation, pages 282-283.
United States vs. Clarke, 8 Peters, text 459-461.
Menard's Heirs vs. Massey, 8 How., 293, text page 306.

SPANISH REGULATIONS.

The report of the Register and Receiver as a Board for the confirmation of land claims, dated December 18th, 1827, transmitted to the Senate January 29th, 1828 (Vol. 5, American State Papers, page 54; Duff Green Edition, page 403; Gales and Seaton's Edition), states the custom under Spanish occupancy as follows:

"Suffice it to say, by every regulation, ordinance and decree on this subject, as well as by the practice invariably pursued, the memorial of the party and the concession of the Governor convey nothing more than the right of possession. It is equivalent to a permit to settle a given portion of the public lands, with a promise implied that if the party shall so settle and remain for ten years he shall become by such residence fully and legally entitled to a right of property. This first permit of the Governor to settle on the lands is called a concession, which conveys, as we have just remarked, a right of possession, defeasible by sale, by abandonment or by death."

The report then defined a title in fee or royal title which alone separates the property from the royal domain.

This report is cited by Mr. Chief Justice Fuller, 180 U. S., pages 432-433.

See also the report of the Commissioners in the claim of James Bosley, Vol. 3, page 752; American State Papers, Gales and Seaton's Edition.

In the report of the Land Commissioners printed in Vol. 4 of the American State Papers, page 183, it is stated:

"A concession is merely a grant of land petitioned for before the making out of a formal title. The first is generally

made when the order of survey is decreed and the last after the plat and certificate is returned."

In the final report of the Land Commissioners, printed in Volume 5, page 372, Duff Green Edition, Volume 6, page 97, Gales and Seaton's Edition, American State Papers, they set out the proceedings had to obtain a grant of land, the petition, the decree and then the survey, and continue:

"This being done * * * After ten years' possession it was competent for him to prove before the Governor the performance of all these conditions and to obtain a full and indefeasible title. * * * The memorial of the party and the decree of the Governor therein found as it usually was in the office of the Governor's Secretary, passed no title to the land in this province. * * * The memorial and decree aforesaid * * * conveyed no title to the party."

These reports and the cases cited show that in all kinds of grants there was, in addition to the memorial and decree, a final complete title issued after the return of the official survey, before the party obtained a legal title; this was known as the title in form or royal title, so called because as above stated it was always made in the name of the King in whom was vested all the public domain, and was issued and recorded in the Escribano's office.

Doe vs. Latimer, 2 Fla., text 82.

See United States vs. King, 7 How., 833, text 852, where Mr. Chief Justice Taney states the form of a grant intended to sever lands from the royal domain.

The Spanish law was recognized and announced by this Court as early as 1827 in the case of De la Croix vs. Chamberlain, 12 Wall. 599, text 601. Speaking of a concession made by Spain this Court, by Mr. Justice Trimble, said as must be said of the grant to Marcos:

"It shows upon its face that other acts of sovereignty remained to be done to perfect the title, and which the sovereign power might withhold. A survey was to be made, and, according to the laws and usages of Spain, a formal grant was to be made, in such cases, to complete the title."

MARCOS' TITLE PAPERS—A CONCESSION ONLY.

Apart from the indefiniteness of the tract granted Marcos, the title papers on their face gave him but an inchoate title; they were but the first concession and the title remained in the King of Spain until the second or royal title was issued.

The laws and custom under which lands in the Spanish province of Florida were granted was again set out in the case of Fremont vs. United States, 17 Howard, 542, text page 554.

The form of Spanish grants in Florida is there described by Mr. Chief Justice Taney in these words:

"Grants of land in Louisiana and Florida were usually made in the following manner: The party who desired to form a settlement upon any unoccupied land presented his petition * * * Upon the receipt of the petition, the Governor, or other officer who had the power to grant, issued what is usually called a concession to the party, authorizing him to have the land surveyed by the official surveyor of the province * * * and if the surveyor found it to be vacant, and that the grant would not interfere with the rights of others, he returned a plat, or figurative plan, as it was called, and the party thereupon received a grant in absolute ownership.

"These grants were almost uniformly made upon condition of settlement, or some other improvement, by which the interest of the colony, it was supposed, would be promoted. But until the survey was made, no interest, legal or equitable, passed in the land. The original concession granted on his petition was a naked authority or permission, and nothing more. But when he had incurred the expense and trouble of the survey, under the assurances contained in the concession, he had a just and equitable claim to the land thus marked out by lines, subject to the conditions upon which he had originally asked for the grant. But the examination of the surveyor, the actual survey, and the return of the plat, were conditions precedent, and he had no equity against the government, and no just claim to the grant until they were performed; for he had paid nothing, and done nothing, which gave him a claim upon the conscience and good faith of the government. * * * and when Spain ceded the territories to the United States it held these lands as

Public Domain as fully and amply as if these concessions or authorities had never been given, and the United States received the title in the same full and ample manner * * * neither the legal nor the equitable right to them, as public domain had been impaired by any act of the Spanish authority, nor had any right been conveyed to nor vested in the claimants."

GRANT TO MARCOS NOT IN THE LIST OF COMPLETE TITLES.

Pages of this brief might be filled with evidence that a grant in the form used in the case at bar is a mere concession or permit to occupy the lands and not a complete title, but the matter is conclusively settled by the printed list of complete titles printed in Vol. 8, American State Papers; all complete titles issued under the royal order of 1790 are printed there on pages 261 to 264, and of all complete titles issued under the royal order of 1815, on pages 265 and 266.

The grant to Marcos is not among the list, hence it must have been and was an incipient title or first concession.

We did not put this list in evidence, but this Court will take judicial notice of these volumes since they are published by authority of the Senate.

In Jones vs. United States, 137, U. S., 214—34 L. Ed., 391, it was held the Court would take judicial notice of documents emanating from the legislative department of the government when not found in the record.

The archives are public documents which the Court has a right to consult even if not made formal proof in the case.

United States vs. Teschmaher, 22 How., 292—16 L. Ed., 357.

Knight vs. U. Land Ass., 142 U. S., 161—35 L. Ed., 978.

The names of the persons beginning with "M" contained in this list is here printed.

Alphabetical list of real titles or patents to land issued by the Governor of East Florida by virtue of the Royal Order, 1815:

Grantees.	Quantity.	Date.	Grantors. Gov. Coppinger
Medecis, Francis	245	2/15/1816.	Do
Mier, Antonio	275	2/16/1816.	Do
Miranda, Peter	790	7/17/1816.	Do
Montesdeoca, John G.	780	9/3/1816.	Do
Miranda, Peter	100	11/28/1816.	Do
Marin, Francis	340	6/20/1817.	Do
Miranda, Peter	2000	12/12/1817.	Do
Mantinez, Mathias	1000	1/24/1818.	Do
Do	Do	1/26/1818.	Do
Matinely, James	300	4/16/1818.	Do
Mattair, Lewis	500	1/3/1821.	Do
Miranda, Peter	4000	4/11/1821.	Do
Do	3400	Do	Do
Do	2000	Do	Do
Do	600	Do	Do

It is worthy of note that according to this list compiled for the Government by Alvarez, the keeper of the Spanish archives in East Florida, Governor Estrada made only two grants in absolute property under the royal order of 1815, one to Miguel and Joseph Andreu for 100 acres and one to Henry Young for 980 acres. All other complete titles made under the order of 1815 were issued by Governor Coppinger, who succeeded Governor Estrada.

It is further worthy of note that not a single case reported in the volumes of reports of this Court as confirmed upon a complete title fails to appear in Alvarez's list.

DID CONFIRMATION OF THE GRANT TO MARCOS BY THE UNITED STATES MAKE TAXABLE THE LANDS PATENTED.

Appellant avers in its answer that the grant to Marcos was made in full property by Spain, and fully confirmed by the United States, to vest title in Teresa Rodriguez without further acts and without patent.

Appellant's contention is stated on pages 38 and 39 of counsel's brief on final hearing in these words:

"The United States finally recognized the grant as having been a perfect, complete and confirmed grant from May 23, 1828, and after that it was subject to taxation."

Even if it should be conceded that the Act of 1828 confirmed the grant to Marcos, appellant would not be helped, for no particular lands were granted.

"That the grant stands recognized as complete and valid against the United States and anyone claiming under them * * * we have no doubt. * * * the recognition extended only to the boundaries the grants themselves furnished."

McDonough vs. Millaudon, 3 Howard, 693, text 706.

Sidell vs. Granjean, 111 U. S., 412—28 L. Ed., 330.

When the claim confirmed * * * emenated from the preceding governments (of Louisiana) the primitive title is merely recognized and recurrence must necessarily be had to it in order to ascertain the extend and boundaries of the land.

Stack vs. Orillion, 11 La., 587—30 Am. Dec., text 726.

Marcos petitioned for a tract of 5,000 acres, "on the two banks of a creek which comes from the west and discharges itself into the river St. Johns about two miles north" of Long Lake.

Estrada granted Marcos the lands described in his memorial (page 116 of the record).

By the Williams survey approved by the Land Department, June 18th, A. D. 1894, which is set out in the patent, the tract has been surveyed by the United States in the northern part of township nineteen (19), south of range twenty-eight (28), according to the public surveys of Florida.

The Court will judicially notice the sectional map issued by the Land Department of the United States.

From that map it appears that in that township there is no creek emptying into the St. Johns River and no Long Lake.

The title of the lands in controversy, therefore, whether Marcos held a first concession or a royal title, is held under the United States and not from Spain.

United States vs. Forbes, 15 Peters, text 182.
United States vs. Clarke, 8 Peters, text 468.

APPELLEE'S TITLE RESTS WHOLLY UPON THE PATENT FROM THE UNITED STATES.

This is made certain by the petition for confirmation of the concession which is dated December 1, 1823, and recites that the land has never been surveyed (page 115 of the record).

At the date of the treaty with Spain their ancestor had an equitable right which the United States stipulated to respect and confirm to the same extent it would have been valid under Spain.

United States vs. Wiggins, 14 Peters, text 350.

This equitable right was to the particular tract of land granted to Marcus, two miles north of Long Lake on both banks of a creek emptying into the St. Johns River, if this tract of land could be identified.

The grant conveyed the land described in the petition and no other.

United States vs. Clarke, 8 Peters, text 468.

What this equitable right in appellee's ancestor to the particular land granted by Governor Estrada was at the Change of Flags must be determined by the laws and ordinances of Spain.

United States vs. Kingsley, 12 Peters, 476, text 485.
McMicken vs. United States, 97 U. S., 204—24 L. Ed., 949.

These laws will be judicially noticed:

United States vs. Turner, 11 Howard, 663-668—13 L. Ed., 859.
Fremont vs. United States, 17 Howard, 542-557—15 L. Ed., 245.
United States vs. Kingsley, 12 Peters, text 484.
United States vs. Perot, 98 U. S., 428-430—25 L. Ed., 252.
United States vs. Chaves, 159 U. S., 452-459—40 L. Ed., 218.
Sullivan vs. Richardson, 33 Florida, 1—14 So. Rep., 709.

NEVER SEVERED FROM THE ROYAL DOMAIN.

No Court can treat a claim as conferring a right to a specific tract until its boundaries are capable of identification or have been established by a survey.

The lands not having been severed from the lands belonging to the King of Spain before the cession passed to the United States in fee.

Maguire vs. Tyler, 8 Wall., 650.

United States vs. Wiggins, 14 Peters, text 350.

D. Autrive vs. United States, 101 U. S., 700-706—25 L. Ed., 871.

United States vs. Forbes, 15 Peters, text 182-184.

In the case last cited the Court says:

"All the public domain of Spain was ceded to this government by the treaty of cession, and the title, in fee, to the same vested in the United States." "No survey of the land granted was ever made; the duty imposed on the grantee to produce the plat and demarcations in proper time was never performed. * * * the execution and return of the survey to the proper office, in such case, could only sever the land granted from the public domain. * * *

"No particular land having been severed from the public domain by John Forbes, this was the familiar case of one having a claim on a large section of country unlocated, in its nature not differing from the holder of a land warrant in the American States" (text pages 182 to 184).

In United States vs. Miranda, 16 Peters, text 158, the Court says:

"No survey was made under the grant whilst Florida belonged to Spain * * * is such a grant protected by the treaty? We think not."

And on page 159:

"In the case before us from the want of a survey, or some point for the beginning of one, there can be no seizin in fact nor in law." "No order of survey was made; nothing was done to withdraw the land from the mass of property. * * * The eighth article of the treaty * * * imposes upon the United States no obligation to make a title to lands of which the

grantee had neither an actual seizin nor a seizin in law. * * * The grant now sought to be confirmed was not so separated by survey or by any such distinctive call as will admit of a survey."

TITLE PAPERS ON THEIR FACE ARE A FIRST CONCESSION.

Upon the face of the title papers evidencing the title held by Marcos under Spain (the petition and grant, pages 115 and 116 of the record), it appears that there is no point for the beginning of a survey of the 5,500 acres granted. It, therefore, remained in the King of Spain.

"Under the treaty with Spain the United States acquired in sovereignty all the lands in Louisiana which had not before been granted by the Spanish government and severed as private property from the royal domain."

United States vs. King, 7 Howard, p. 847.

"The Court not being able in this instance to derive any assistance from public acts beyond the face of the grant * * * has presented to it a territory some thirty miles long * * * at any one point in which distance the survey might be commenced with equal propriety that it might be at any other point: it follows that the description when applied to the facts is too vague and indefinite for any survey to be made, and that therefore the claimant can take nothing under the concession."

United States vs. Lawton, 5 Howard, text 28.

The attention of the Court is called to the form of the grant in the case set out on page 11 of the report.

As in the petition in the case at bar Darley petitioned for a grant "in absolute property." Governor Coppinger responds "there are granted to him in absolute property, the * * * land which he solicits," yet Mr. Justice Catron in 1847, after long experience in deciding the Florida cases, classes Darley's title among the "incipient titles such as the present is" (page 28).

He further says lands were not severed from the King's domain until the plat and certificate of survey had been made and recorded. Until this was done the grant was not recognized as conferring an individual title to any specific parcel of land

either by the government of Spain or by the United States (page 29).

In Buyck vs. the United States, 15 Peters, 215, text 223, the Court says:

"But further supposing proof of the grant to be made * * * still it could convey no land for want of identity or ascertainable locality."

The case of Doe vs. Latimer, 2 Florida, 71, is instructive because the opinion was delivered by Judge Thomas Douglas who had been the United States attorney in the Florida cases brought in the Superior Courts by the claimants for Spanish grants in East Florida under the Act of 1828.

On page 87 this learned Judge says:

"Indeed the settled doctrine of the Supreme Court of the United States in respect to these Florida grants is, that grants of land embracing a wide extent of country, or within a large area of natural or artificial boundaries, * * * and which are without such designation as will give a place of beginning for a survey, are not lands withdrawn from the mass of vacant lands ceded to the United States in the Floridas and are void as well on that account as for being so uncertain that locality can not be given to them."

ONLY CONFIRMED CLAIMS MIGHT BE SURVEYED.

It is true that in 1851 the Surveyor General of Florida approved a survey in township nineteen (19), south of range twenty-eight (28), as the place where the land granted Marcos in 1815 ought to be located, and the tract so surveyed has been patented to appellees (pages 842 and 1027 of the record), but this survey never had the approval of the Commissioner of the General Land Office until February 12, 1894, when the Secretary ordered the grant patented.

All this township was surveyed as public land in 1845 and 1846 (page 1026 of the record), and this survey became and was the only official survey of the lands.

It appears by the letter of the United States Surveyor General to the Commissioner of the Land Office (pages 847 and 848 of the record) that the official plats in the Surveyor General's

Office were those which showed the lands to be public lands and that the survey of the lands in controversy as a private grant never became an official record until directed by the Commissioner of the General Land Office in A. D. 1894.

The Commissioner of the General Land Office held that the grant to Marcos had not been confirmed, therefore there was no authority for Williams to survey the land as a private claim, all the acts of Congress limiting the authority to survey to the confirmed claims.

THE ACT OF JULY 4, 1836.

Under the Act of July 4, 1836, Section 453, Rev. Statutes, the Commissioner of the General Land Office is vested with plenary powers as to private land claims and his determination of the rights of the United States is conclusive.

St. Louis Smelting Company vs. Kemp, 101 U. S., 636, text 657—26 L. Ed., 878.

Johnson vs. Tourley, 13 Wall., 72.

Knight vs. U. Land Ass., 142 U. S., 161—35 L. Ed., 988.

Catholic Bishop, etc., vs. Gibbon, 158 U. S., 155—39 L. Ed., 936.

Under this act the Commissioner exercises control over the acts of the subordinate officers charged with making surveys.

Castro vs. Hendricks, 23 How., 438—16 L. Ed. 577.

By the Act of June 28, 1848, 9 Stat. L., 242, the Commissioner of the General Land Office was authorized to cause to be surveyed "the private claims or grants which have been duly confirmed" situate in the State of Florida.

MARCOS' CLAIM UNCONFIRMED.

By the Act of May 23d, 1828, Section 2, Congress enacted: "That no more than the quantity of acres contained in a league square shall be confirmed within the bounds of any one grant, and no confirmation shall be effectual until all the parties in interest under the original grant shall execute * * * a final release of all claims to the residue contained in the grant."

"Such legislation is not subject to any constitutional objection so far as it applies to grants of an imperfect character which requires further action of the political department to render them perfect."

Beard vs. Federy, 3 Wallace, 478—18 L. Ed., 92.

Nor if applied to perfect titles.

Mitchell vs. Furman, 180 U. S., 402, text 439.

In the case last cited the opinion says:

"If the claim came within the provisions of the second section of the Act (May 23, 1828), its validity was recognized only to the extent of one league square and upon condition that the claimant should relinquish all in excess of that quantity on or before May 28, 1831" (page 439, text).

By Section 8 of the Act of 1828 the provisions of the Act of May 26, 1824, were extended to the territory of Florida. By Section 7 of the Act of 1824 in every case in which any claim was barred by failure to prosecute within the time limited by the Act, the land specified in such claim was declared to be held and taken to be a part of the public lands of the United States, subject to the same disposition as other public lands.

United States vs. Arredondo, 5 Peters, text 748.

The United States had plenary power to annex any conditions to its confirmation of this claim, resting upon an imperfect right.

Grisar vs. McDowell, 6 Wallace, 379—18 L. Ed., 867.

It is in evidence that no release was filed in the case at bar and the claim was never brought before the Court for confirmation under the 6th Section of the same Act.

This claim then was unconfirmed and its validity was not recognized and therefore was denied by the United States from May 26, 1831, to June, 1895, when the patent issued, and as then held by the Land Department the lands were a part of the public domain.

DETERMINED TO BE PUBLIC LANDS.

The survey of the lands as public lands by the United States was the equivalent of office found and was a final determination that the United States claimed the lands as part of the public

domain even if any presumption to the contrary could have been indulged in.

"The laws had been extended over this tract, the lands surveyed and put on sale * *. This is a legislative equivalent for the reunion by office found."

United States vs. De Repentegny, 5 Wall., 211, text 268—18 L. Ed., 646.

McMicken vs. United States, 97 U. S., 204, text 208—24 L. Ed., 952.

In 1872 the United States patented to the State of Florida about 1,600 acres, parts of four sections, according to the official plats of Tp. 19, R. 28 (page 835 of the record).

By the failure of appellees' ancestor to seek a review of the holding of the Land Department that the grant to Marcos exceeded a league square and was not confirmed by the Act of 1828, the lands became public in the just meaning of the term, were subject to disposition as other public lands and hence were not taxable.

Newhall vs. Sanger, 92 U. S., 761—23 L. Ed., 770.

UNTIL COMMISSIONER OF LAND OFFICE APPROVED THE SURVEY MARCOS' RIGHTS WERE ONLY WHAT APPEARED ON THE FACE OF HIS CONCESSION.

Counsel for appellant contend that the grant to Marcos was confirmed by the Act of 1828 and needed no survey.

This contention needs no further answer than is contained in the petition for confirmation and the recommendation of the board, pages 114-116 of the record.

This Court has held that until a survey of the lands confirmed as a private claim had been approved by the Commissioner of the General Land Office, or where such survey had been disapproved by the Secretary of the Interior, the rights of the claimant were only what he had acquired by his concession.

Snyder vs. Sickles, 98 U. S., 203, text 213—25 L. Ed., 102.

West vs. Cockran, 17 How., 403, text 416—15 L. Ed., 115.

As in the Act of 1807, so in the Act of 1822 and in all the subsequent legislation relating to the confirmation of private

land claims in Florida, it is manifest that Congress intended that a final title as against the United States should not be made to vague grants until their bounds had been ascertained and the particular tract defined by a survey made under the authority of the United States.

Until such survey so authorized was approved by the Commissioner of the General Land Office the claimant's title, although confirmed by the Commissioners, attached to no land nor could a Court of justice ascertain its boundaries, that being a duty to be performed by the executive department of the government.

Counsel for appellant, however, contend that when the Williams survey was made in 1851 that the confirmation then became effective and the land so surveyed became the property of appellees' ancestor and subject to taxation.

This contention is not sound for the reason that the commissioner of the General Land Office from 1828 until 1894 held that the grant to Marcos was not confirmed because it exceeded a league square.

The Acts of Congress authorizing a survey under the authority of the United States confined the power and duty to survey to confirmed grants.

The fact that the Commissioner of the General Land Office held that the grant to Marcos was not a confirmed grant is proof positive that the survey made by Williams was never approved by the Commissioner of the General Land Office.

The power to issue a patent for the land was confined by, statute to the claims which had been "heretofore confirmed by law" where surveys for the land had been or might thereafter be made upon presentation to the Commissioner of the General Land Office of duly approved plats, "if the same be found correct by the Commissioner."

Act of December 22nd, 1854, 10 Stats. 599, Section 2447, Revised Statutes.

It therefore conclusively follows that no patent releasing the title of the United States to the particular lands described in the patent could have issued on the Williams survey until the holding of the Commissioner of the General Office, that the lands were not confirmed by the Act of 1828, had been reversed

by the Secretary of the Interior, and that the recitation in the patent "that the lands had been regularly surveyed as Section 37 in Township 19, Range 28, and Section 41, Township 19, Range 29, as appears by a plat and description thereof on file in the General Land Office of the United States, duly authenticated and approved on June 18, 1894," establishes that the earliest date when the Williams survey became effective and was approved by the Commissioner of the General Land Office as the survey of the lands embraced therein as a private claim is June 18, 1894, or as stated on page 134 of appellant's brief, February 12, 1894.

PROCEEDINGS IN THE LAND DEPARTMENT.

Counsel for appellant, on page 121, states that no patent was required by the Act of May 23, 1828. This is true—the Act of February 8, 1827, Section 8, provides for the issuance of patents on confirmed grants, upon satisfactory proofs to the Commissioner of the General Land Office. The patent in this case was issued under the Act of 1854, Section 2447, Rev. Stats., the record page 981.

The argument, on page 122, that the decision of the Secretary of the Interior holding this grant was confirmed was a determination that the grant by Spain conveyed a complete title is not supported by any authority known to counsel for appellees.

The language of Mr. Justice Catron in United States vs. Wiggins, 14 Peters, text 350, is that the eighth article of the treaty applied to the great mass of incomplete claims, the title to which upon performance of the conditions, Spain would have been bound to protect; that the United States were bound to the same extent and that upon confirmation the claimant is entitled to a patent from the United States by which means his equitable claim draws to it the estate in fee.

"These are the imperfect claims to which the eighth article of the treaty with Spain refers."

It appears, therefore, that a patent is necessary in this class of Spanish grants, and this has been the uniform holding of the Land Department and the Courts.

The Commissioner of the Land Office is not a subordinate official. The statute just quoted, as well as the Revised Statutes of the United States devolve upon him the determination and settlement of private land claims.

Constitution Art. 4, Sec. 3, par. 2.
Sections 453 and 2447, Revised Statutes.
United States vs. Tyler, 75 U. S., 650 (19 L. Ed., 320).
United States vs. Lawton, 5 Howard, 28.
Knight vs. United States Land Co., 142 U. S., 161 (35 L. Ed., 985, 986, 988).
United States vs. Marvin, 3 Howard, 620.
Catholic Bishop vs. Gibbon, 158 U. S., 155 (39 L. Ed., 931, 932, 936.)
Carr vs. United States, 98 U. S., 433.
Teschmaker vs. Thompson, 18 Cal., 11; 79 Am. Dec., 157.

Under the laws for the settlement of private land claims in Florida, first commissioners, then the Courts were empowered to determine what lands were private property.

The duty of the Courts is set forth with precision by Mr. Justice Catron in United States vs. Forbes, 15 Peters, text 182:

After the time limited for the prosecution of claims to land in Florida in the Courts, the same duties devolved upon the Commissioner of the General Land Office.

Can there be any doubt that while the Land Office held this grant not to be private property but to be public lands of the United States they were not taxable by the State of Florida?

The Commissioner of the General Land Office was the lawful representative of the United States. So long as he refused to patent these lands and held them to be public land, so long they were in contemplation of law public lands, as the opinion in this case declared. Page 91 of the record.

That the Land Department so held is set out in the ruling of the Commissioner in this case.

Complainant's Exhibit No. 6, page 844 to 846, of the record.

The law as construed by the Land Department until A. D. 1894 (as also by this Court), restored these lands to the public domain even if all of the contentions of appellant as to the character of Marcos' title were sustained.

Sec. 7, Act of May 26, 1824, 4 Stat. L. 52.

Sections 8 and 12, Act of May 23, 1828, 4 Stat. L. 284.

Mitchell vs. Furman, 180 U. S., 402.

Chaires vs. United States, 3 How., text 619.

The Commissioner of the General Land Office has undoubted authority to decide upon questions relating to the true construction of an Act of Congress.

Guidry vs. Wood, 19 La., 334; 36 Am. Dec., 680.

By the Act of July 4th, 1836, reorganizing the General Land Office the Commissioner of the General Land Office exercised control of all executive duties relating to private land claims. It necessarily embraced the examination of all surveys of such private land claims and their correction until made conformable with the right conferred upon the claimant by legislative act or judicial decree.

LeRoy vs. Jamison, 3 Sawyer, 369.

Until the survey as a private land claim was approved by the Land Department the lands patented to Teresa Rodriguez were not subject to taxation even if confirmed in A. D. 1828.

Whitney vs. Ganderson, 31 Wis., 359.

Whitney vs. Morrow, 34 Wis., 644.

If we are right in our contention that because the grant to Marcos was without such designation as would give a place of beginning for a survey and that its confirmation was but a recognition of the grant as made without designated boundaries, appellees' rights rested wholly upon the grant made by Estrada to their ancestor until the patent issued, regardless of the area confirmed by the Act of 1828.

What those rights were could only be decided by the Land Department of the government after the time allowed appellees to proceed in the Courts.

The decision of the Land Department was final and binding on the parties before it. (Sections 453 and 2447, Revised Statutes.)

St. Louis Smelting Company vs. Kemp, 104 U. S., 636 (26-878).

Catholic Bishop, etc., vs. Gibbon, 158 U. S., text 166 (39-936).

It is to be noted that under Sec. 2447, Rev. Stats., patents may only be issued upon confirmed claims and after the sur-

veys thereof approved by the Surveyor General have been found correct by the Commissioner of the General Land Office.

In Wilcox vs. Jackson, 13 Peters, text 515, this Court said:

"As the patent was to be issued by the Commissioner of the General Land Office and only where the proceedings were fair and regular, that office must of necessity be the judge of that fairness and regularity."

The doctrine of relation can not here be applied to make good a tax sale and deed, made and issued at time when, according to the records of the General Land Office and the holdings of its Commissioner, the lands were a part of the public domain, because as between the State of Florida and the United States upon general principles of law, the lands were not subject to taxation so long as the United States claimed ownership, whether or not such claim was well founded.

All the territory belonging to the Royal Domain, that is, all the territory of the Floridas which was not private property, was ceded to the United States. What was ceded and what was private property was to be determined by the political department of the United States. Congress prescribed how these rights of property were to be determined, and after a prescribed time this duty devolved upon the Commissioner of the General Land Office.

The claims of the Revenue Officers of the State of Florida were no more binding upon the United States than the claim of the holders of concessions under Spain and it would not for a moment be held that the holder of a concession under Spain might for himself determine that the title of the United States had been released by the confirmatory act, while the Commissioner of the General Land Office held that the claim was unconfirmed and that the lands embraced therein were a part of the public domain.

The contentions of counsel for appellant, found on pages 38 and 39 of his brief on final hearing, that the United States recognized the grant as a perfect and confirmed grant from May 23rd, 1838, and that thereafter it was subject to taxation, are therefore not sustained by the facts and the law.

These contentions are again urged on page 44 of the brief

where it is stated that the grant was subject to taxation from 1845 to 1851 without a further survey by the United States.

As is shown on page 52 of this brief no tax for the years 1845 to 1851 was ever assessed against these lands, but if the State had ever attempted to assess a tax upon these lands before the Commissioner of the General Land Office approved a survey thereof as private lands, such assessment would have been null and void upon general principles of law.

WHEN DID THE UNITED STATES RECOGNIZE THE GRANT.

We have shown that the grant was not "in full property," and was not recognized by the United States as a grant of any particular lands. Was it confirmed by the United States, **i. e.,** was the title of the United States to the lands in controversy released to the heirs of Marcos? If so, when?

Confirmation has been judicially defined as establishing the validity of a claim. If the claim is without boundaries it is a mere recognition of a right to a defined number of acres out of the public domain.

It must be remembered that prior to the Secretary's decision in the claim of appellees as to all claimants under Spain for more than four thousand four hundred and thirty-eight acres who failed to present their claims to a Court, the United States never waived its rights which the treaty gave them as purchasers for a valuable consideration without notice.

Mitchell vs. Furman, 180 U. S., 402.

(See cases cited on page 38.)

It must further be remembered that the answer sets up title under a tax title which has no validity if the United States had not released its legal title derived from Spain, before the tax was levied.

It has been uniformly held that under the treaty the utmost that could be demanded of the United States is to perfect those titles which by the laws and usages of Spain would have been perfected had there been no cession. This perfecting of claims held under concessions was to be by legislation and adjudication and the equities of the claimants settled; but the manner of

settlement as stated rests with the political department of the Government.

United States vs. Wiggins, 14 Peters, 334, text 350.

Mitchell vs. Furman, 180 U. S., 402, text page 435.

We fail to see how appellant is benefited by the failure of appellees to locate their claim. Such failure might have enured to the benefit of the United States, but was waived when the patent issued in 1895. That they did not accept and locate a league square is established by the fact that the United States patented 1,600 acres thereof to the State of Florida.

Counsel claim that the grant to Marcos was confirmed by the treaty with Spain, page 56 of the brief for appellants on the merits.

The answer to this contention in the language of Mr. Justice Catron is that "the construction given the 8th article by this Court in Arredondo's case and in Perchman's case (7 Peters, 51) is that "imperfect titles were **equally** binding on this government after the cession **as they had been on the** Spanish government before."

United States vs. Clark, 16 Peters, 228, text 232.

Congress alone could finally pass upon incipient titles until it authorized the Courts to do so.

United States vs. Lawton, 5 Howard, 10, text 28.

CONFIRMATION VESTED NO PARTICULAR LANDS.

Even if confirmed as claimed by appellant the tract surveyed by Williams was not confirmed and not asked for, but an entirely different tract of land located two miles north of a lake known as "Long Lake."

The grant to Marcos being of no particular lands, the confirmation did not operate to vest a title to any particular land in Theresa Rodriguez and her children.

Sec. 2, Act May 23, 1828; Sec. 7, Act May 26, 1830.

United States vs. King, 3 Howard, text page 788.

Mitchell vs. Furman, 180 U. S., text 439.

If only something without form and shape is claimed, a confirmation of the claim will amount only to a declaration that the claimant is entitled to that something but it will not give him a

standing in Court against occupants of specific tracts with a color of title * * * the confirmation * * * amounted only to a declaration that they were entitled to something to which when ascertained the government would grant them a title.

Slidell vs. Granjean, 111 U. S., 412, text 439, 440.

The Land Department from A. D. 1828 to A. D. 1894 held that the grant to Marcos had not been confirmed. Its holding was conclusive until set aside by the Secretary or by the Courts.

Van Repnegan vs. Bolton, 5 Otto, 33, text 36.

Shanklin vs. McNamara, 87 Cal., 381.

Until patent issues land is in process of administration and subject to the jurisdiction of the Land Department.

Michigan Land and Lumber Co. vs. Rust, 168 U. S., 592-593, text 42—L. Ed., 592.

Gauthier vs. Morrison, 232 U. S., 452—58 L. Ed.

LANDS NOT SUBJECT TO TAXES.

As shown on page 157 of this brief, where the statute is printed, the State statute did not tax the property interest of the land owner, whatever it might be, but by law the tax was levied upon the land.

Appellees contend that in any aspect of the title granted Marcos, the grant was not subject to taxation and sale for non-payment of taxes. Even a perfect, complete grant exceeding a league square could not be taxed until the league square within the bounds of the grant was segregated. The excess was a part of the public domain. Until A. D. 1894 a league square was held and declared by this Court and by the Land Department to be 4,428.68 acres.

United States vs. Perot, 98 U. S., 428 (25-252), A. D. 1879, A. D. 1878.

Mitchell vs. United States, 15 Peters, 52, text 57, text 64, text 69-90-91, A. D. 1841.

Macariz referred to in the opinion, page 90, is the first private grant outside the City of St. Augustine and is located 1,500 Castillean varas from the lines of Fort San Marco within the city.

The Castillean Vara appears to have been the standard of measurement even in West Florida, though Arpents were also there used.

LAND DID NOT BELONG TO TERESA RODRIGUEZ BY ANY RIGHT THAT RENDERED IT TAXABLE.

If as we have shown the United States acquired title to these land and held the same subject to the equitable claim of the heirs of Marcos, which this government afterwards declined to recognize and by the laws refused to give recognition, what estate remained in the heirs of Marcos prior to the issuance of a patent to them?

Certainly no estate subject to taxation.

It is true, lands held under concessions from Spain were and generally are taxable before the patent issues, but only when the grant is to a definite tract of land and during the period the United States recognizes the title of the grantee. The moment this title is forfeited by an Act of Congress and the United States claims the full, absolute title of the land, the State has no power to tax it.

Van Brocklen vs. Anderson, 117 U. S., 151.

The United States must determine for itself when the lands are its property, certainly in its relations to a State, upon the principle of comity.

Knight vs. U. Land Ass., 142 U. S., 161 (35-988).

Under the revenue laws of Florida exempting lands owned by the United States from taxation as well as by general principles of law, all lands claimed by the United States must be held to be exempt. It can not be that lands which are held to be public lands by the Land Department of the Government may be assessed for taxes and sold for non-payment, with the result that many years after the sale the tax title will be maintained if it turn out that the United States was not in fact owner and the Land Department was in error in claiming they were part of the public domain. As between the two sovereigns a claim of title in the United States must be deemed ownership within the meaning of the State revenue law.

WILLIAMS' SURVEY DID NOT MAKE THE LANDS PRIVATE PROPERTY.

Appellant claims that by the Williams survey in 1851 the grant made to Marcos was ascertained and given form and that it then became subject to taxation.

The record showed that the Land Department refused to recognize the Williams survey as a segregation of these lands from the public domain. This is evidenced by the indorsement placed upon the township map found among the records of the Surveyor General's Office at Tallahassee. This plat has written at the top, "diagram to be appended to Township 19, Range 28."

The certified copy found in the record, page 1027, Defendant's Exhibit "E," is certified to as a copy of the original on file in the Surveyor General's Office.

The Surveyor General by letter of June 18, 1894, pages 847, 848 of the record, advises the General Land Office with regard to this survey and plat that the official plats in his office do not show the claim of Theresa Rodriguez and asks the Commissioner if the records of his office show approved plats of Township 19, Ranges 28 and 29 East, of later date than those in his office that the Honorable Commissioner would furnish the Surveyor General's Office with a copy thereof.

No such plats have been put in evidence by the defendant or discovered by counsel for appellees and it is presumed that no such plats exist, which leaves the records as showing that the only approved plats of Township 19, Ranges 28 and 29; are the plats which have subdivided them into thirty-six sections in accordance with the subdivision adopted for public lands.

The certificate attached to Complainant's Exhibit No. 10, page 1026 of the record, describes the copy of the plat of Tp. 19, R. 38, surveyed as public lands as a true and correct exemplification of the official plat on file in the Surveyor General's Office.

As further evidence that the Land Department of the Government did not recognize the Williams survey as official, and did not adopt the same, is established not only by the recitation in the patent to Teresa Rodriguez that this patent was issued upon the plat in the description recited to have been authenticated and approved June 18, 1894, by the signature of W. H. Mil-

ton, Jr., Surveyor General for the State of Florida, but is conclusively established by the patents issued to the State of Florida, March 14, 1872, which is recited in the deed from the board of Trustees of the Internal Improvement Fund to the United States conveying 1,600 acres, in Sections 12, 13, 14 and 15 of Township 19, Range 28, according to the subdivisions used in the conveyance of the public lands.

These patents conveyed this 1,600 acres of land according to the survey made by Norris in 1847 and the plat of Township 19, Range 28, which Surveyor General Parlin certified was an official plat of that township.

Further evidence that the Williams survey of this land as a private claim was never recognized by the Land Department is contained in the letter of Commissioner Groff addressed to Butt and Silver, dated April 3, 1890, found on pages 845 and 846 of the record, wherein the Commissioner states that the Rodriguez claim had never been confirmed.

It follows as a matter of course that if the Land Department held that the Marcos' claim had never been confirmed, the survey of the township by Norris as public lands must be deemed the official survey and the survey by Williams in 1851 of the land as a private claim stood without authority at law.

NO SURVEY AS A PRIVATE CLAIM AUTHORIZED BY LAW.

That there is any presumption, as contended upon pages 41 and 42 of appellant's brief on the merits, that claimants under the grant to Marcos ever made a survey of this grant we deny.

The act of June 28, 1848, 9th Statutes, page 242, made it the duty of the Commissioner of the General Land Office to cause to be surveyed the private claims which had "been duly confirmed" situate in Florida.

It is a matter of history that all the private claims situate in the State of Florida have been surveyed under the authority of that Act, yet counsel for appellant has repeated ten times in his brief on pages 38, 40, 44, 53, 56 and 101 that it was the duty of appellees' ancestor to cause the lines of their claim to be connected with the township lines or that they were required to

survey and locate it, or to have furnished the Surveyor General with information on which to connect up their claim with the public surveys.

Section 7 of the Act of February 8, 1827, had imposed the same duties upon the surveyor of public lands in Florida, and directed the Commissioner of the General Land Office to issue a patent where that office was satisfied the claimant was entitled to it after a survey had been made by the public surveyor, and provided that the keepers of the public archives in Florida should furnish the surveyors of public lands a description of each claim to land which shall have been confirmed, which shall specially designate the quantity, locality and connection of such claim.

The Surveyor General's Office was the successor to the office of the keeper of the public archives.

To the contention that the description contained in the grant itself made the land subject to assessment (page 42 of the brief) we refer to that description (page 116 of the record) and to our argument, ante, that the grant was without any such description as would enable it to be located.

Five thousand acres on the banks of a creek, which runs into the St. Johns river two miles north of a lake, even if such a lake were found and located, is not such a definite location as segregates any land.

We do not agree with counsel that the description in the grant is one a surveyor could locate. We find no Long Lake on the map of Florida. The creek which runs through the grant as located by the United States runs into the Wekiva river. The Wekiva empties into the St. Johns river about six or eight miles north of Lake Monroe, a circular body of water.

The survey as public lands was approved (page 1026 of the record), therefore there can be no presumption of the existence of a survey of the land as a private claim, nor that it could lawfully be assessed for taxes as a private claim by State officials.

The survey by the United States as public lands, of the lands granted Marcos was prima facie evidence of title in the United States and evidence that the United States claimed ownership thereof.

United States vs. de Repentegny, 5 Wall, 211, text 268 (18 L. Ed., 646).
McMechen vs. United States, 97 U. S., 204, text 218 (24 L. Ed., 952).
Mitchell vs. United States, 9 Peters, text pages 743-744.
Nofire vs. United States, 164 U. S., 660.
Carpenter vs. Rannels, 19 Wall, 138.

ORIGINAL TAX ROLLS ESTABLISH NO TAX WAS ASSESSED.

If these lands had been taxable from 1845 to 1851, the evidence shows that no tax was in fact assessed against them upon the tax rolls prior to the alleged sale to Starke. (Record pages 155 to 185.)

The duplicate original tax rolls in the Comptroller's Office were produced, and it was proved by a witness, a clerk in charge of the books, that there was no assessment therein of the land or to Teresa Rodriguez for any of the years for which the land is recited in the alleged deed of Simpson, sheriff. The roll for the year 1847 could not be found, but the alleged deed made in 1852 purports to sell for the unpaid taxes of "for the years 1845 to 1851, inclusive."

These tax rolls were not only evidence of what they contained but the best evidence.

Rokendorff vs. Taylor's Lessee, 4 Peters, 360.

These were not copies, but duplicate originals. See Chapter 10, Acts 1845—Thompson's Digest, Laws of Florida, page 90.

Neither the legal title of the United States, nor the equitable right, if any remained in the heirs of Marcos, was prejudiced by the alleged sale to John Starke in A. D. 1852, the lands sold being not the lands granted to Marcos, and being lands the title in fee of which vested in the United States, and there never having been a tax assessed against them.

There is nothing in the contention of counsel, found on page 93 of the brief on the merits, that the law did not require lands to be listed on the assessment roll.

Chapter 10, Laws of 1845, Section 10, Thompson's Digest, page 90, infra page 157.

This law remained in force until the enactment of Chapter 1713, Laws of 1869.

See the form of certificates made by the several assessors to the original tax rolls for the years 1845 to 1851, found in the State Comptroller's office, pages 156, 165, 170, 174, 176, 180 of the record.

There can be no presumption that there ever was an assessment for the taxes for 1845 to 1851, because we produced the original tax rolls, and proved they contained no assessment of appellees' land.

We are unable to find in the law cited on page 95 of the brief, any authority for the contention of appellant's counsel that a deed of land in Florida without witness is good. The statute printed on page 153 of the brief, Section 1 of Chapter 1, Thompson's Digest, page 177, was enacted in A. D. 1828 and declares no estate in land may be conveyed except by deed in writing, sealed and witnessed by at least two witnesses.

Neal vs. Gregory, 19 Fla., 368.

Hart vs. Bostwick, 14 Fla., 173.

SECOND TAX SALE INVALID.

Did the alleged tax sale to Mills in A. D. 1872 of these lands as belonging to John Starke in any way prejudice the legal and equitable title of the United States or the rights of the heirs of Marcos therein?

Manifestly not:

(a) Because the United States still owned and claimed that part of the land not selected by the State under the Swamp Land Act.

(b) Because the State of Florida had selected and the United States had approved under the Swamp Land Act about 1,600 acres of said lands.

(c) Because the tax sale to John Starke in 1852 was void and the assessment under which the sale was made in 1871 was to John Starke, as owner.

(d) Because the assessment and sale was of certain sections surveyed as public lands and it conclusively follows that if

the United States surveyed these lands as public lands there could be no valid tax levied thereon as a Spanish Grant.

(e) Because the alleged tax deed was made by the Tax Collector, there being no statute authorizing the execution of a tax deed by the Tax Collector. The County Treasurer was the designated officer to make sale of lands for delinquent taxes and the County Clerk was the officer designated to make deeds.

Mere enumeration of these objections without argument suffices to show that complainants' title was not prejudiced by the alleged sale and alleged tax deed in 1872.

Both the tax sale had in 1852 and that made on August 20th, 1870, were wholly without warrant at law. In both cases so much appears on the face of the proceedings to show that they were absolutely void that every presumption of regularity is rebutted and even at this day it must be held to be an attempt of Simpson, the sheriff in the first tax sale, and Partin, the tax collector in the second tax sale, to fraudulently make a title to lands which were supposed by them to belong to unknown persons residing in a foreign country, which they deemed the true owners had abandoned. That this assertion is warranted by the facts will be apparent from an examination of the several statutes in force for the assessment and collection of taxes in A. D. 1851 and A. D. 1870. These statutes are set out on pages 157-160 of this brief.

NO BAR IF OCCUPANCY BY APPELLANT HAD BEEN PROVED.

Has the complainants' title been barred by any occupancy of the lands under color of title?

It has not, because:

(a) The occupancy prior to the issuance of the patent can not be counted against the heirs of Marcos, to whom the United States relinquished its rights June 26, 1895.

(b) Subsequent to 1895 there has not been such occupancy as constituted adverse possession.

(c) Subsequent to 1895 there has been no occupancy of any part of the lands patented, and appellees, the patentees, have had the legal possession thereof, both as seized under the patent

and through the actual seizin in their name by Mr. Martin, their attorney.

(d) Any occupancy had by appellant is under entry made while the title was in the United States.

(e) Until the deed to appellant May 3, 1900, no person other than appellees and their predecessor in title, the United States, had color of title to that part of the grant lying in Range 29.

That occupancy of the lands while the United States alone or the United States and the State of Florida claimed title thereto can not be counted an adverse possession, as against the title conveyed by the patent in 1895 to the heirs of Marcos needs no argument.

Gibson vs. Chouteau, 13 Wallace, 92 (20-536).

Redfield vs. Parks, 132 U. S., 239.

Missionary Society vs. Dalles City, 107 U. S., 336— 27 L. Ed., 548.

Doe vs. Johnson, 92 U. S., 343—23 L. Ed., 683 (where there was an occupancy from 1822 to 1867).

Note to 76 American State Reports, page 479.

Stringfellow vs. Tenn. Coal and I. Co., 117 Ala., 250—22 So. Rep., 997.

Sanford vs. Cloud, 17 Fla., 572.

Section 1288, Revised Statutes; section 1719, General Statutes, Laws of Florida.

A man by entry may disseize a common person but not the king.

17 Viner's Abridg., Prerogative B. d—4.

Lands part of the public domain are not prescriptable until the patent issues.

Perkins vs. Vincent, 17 So. Rep., 126; Louisiana Reports, decided February 11, 1895.

SEIZIN HAS NEVER BEEN LOST BY APPELLEES.

Title passed from the United States by patent in 1895. Seizin was transferred to the patentees, there being no one in actual occupancy. The agent of patentees took actual possession of the whole grant.

The deed thereafter made by Dawes & Thompson to the Colonization Company is dated December 2d, 1899, and described about twenty sections, but excepts the N W ¼ of N W ¼, Section 9, and sixty acres in the same section. This land is proved to be and has been since April, 1895, vacant. Hence the patentees have always had seizin of this and hence of the whole grant, the United States having seizin of the entire grant when the patent issued.

Hunnicut vs. Peyton, 102 U. S., 333—text 363-369.

If, as we have argued, Marcos held but a concession which equitable right the treaty confirmed, but which Congress refused to recognize beyond 4,439 acres, and the lands were of a class which the law requires to be patented both the equitable and legal title remained in the United States until the patent issued, and while it so remained the grant was in process of administration and the United States having jurisdiction over it, had the actual seizin, and any occupancy was a trespass.

Bagnell vs. Broderick, 12 Peters, 426-450—10 L. Ed., 242.

Mich. Land and L. Co. vs. Rust, 168 U. S., 589-593—42 L. Ed., 592.

No possession can be deemed adverse to a party who has not at the time the right of entry and possession.

Devyr vs. Schaeffer, 55 N. Y., 451.

OCCUPANCY OF TIMBER LANDS.

What has been the nature of the occupancy since 1895 and what its effects under the Statutes of Florida governing adverse possession?

The Statute in force when the patent issued as well as when this suit was begun was enacted in 1872 as Chapter 1869, Laws of Florida, Sec. 1262 et seq., Revised Statutes; Sec. 1713 et seq., General Statutes.

Our Statute is copied almost verbatim from the Laws of the State of New York enacted there in A. D. 1830.

Rainey, C. J., in Kendrick vs. Latham, 25 Fla., 819—6 So. Rep., 875.

Therefore the then known and settled construction which

had been placed on this Statute by the Courts of New York not inharmonious with our general laws, must be deemed to have been adopted as an integral part of the law.

Duval vs. Hunt, 34 Fla., 104—15 So. Rep., 882.
Endlick on interpretation of Statutes, Sec. 371.
Fla. Cent. & P. Ry. Co. vs. Mooney, 40 Fla., 28.
State vs. Rowley, 12 Com. 101.
Adams vs. Field, 21 Vt., 265.
Riggs vs. Walton, 13 Ill., 16.
Campbell vs. Quinlan, 38 Scan., 288.
Eldridge vs. Kuchle, 27 Ia., 176.

"OR OF SOME PART OF SAID PREMISES" OMITTED IN FLORIDA STATUTE.

It is to be observed that our Legislature has left out of our law a provision contained in the New York Statute which is significant of the intent of the Legislature and must control the Courts in its construction.

The Statute as enacted in the State of New York reads as follows:

"Whenever it shall appear that the occupant, or those under whom he claims, entered into possession of premises under claim of title exclusive of any other rights, founding such claims upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent Court, and there has been a continued occupation and possession of the premises included in such instrument, decree or judgment **or of some part of said premises** for seven years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consists of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract."

Kendrick vs. Latham, 25 Fla., 819—6 So. Rep., page 875.

The italicized words "or some part of said premises" were omitted by the Legislature of Florida in Sec. 5, Chapter 1869; Sec. 1290, Revised Statutes; Sec. 1721, General Statutes.

That the words of a Statute differ from the words of a prior

Statute on the same subject is good reason to conclude that they have a different construction.

Rick vs. Keyser, 54 Pa., 86-89.

Where a provision is left out of a Statute, either by design or mistake of the Legislature, the Courts have no power to supply it.

Hobbs vs. McLean, 117 U. S., 567—29 L. Ed., 945.

It is clear from this omission that to constitute adverse possession under our Statute by one having a color of title, his occupancy must have been a continued occupancy of all the premises included in his paper title, and an actual occupancy of "some part of said premises" for seven years will not suffice.

In the case at bar the paper title of the Florida Colonization Company the predecessor of the defendant in claiming title was made December 2nd, A. D. 1899, and attempts to convey 5,366 acres, more or less, of township 19, south, range 28 east, by sections of 640 acres each, naming twenty different sections and parts of section of township 19, range 28 east, and containing the following exception:

"Except the north half of the northwest quarter of section 9 and excepting sixty acres in section 9 between the Mill Road and the center line of said section."

Each of the twenty sections named in the quitclaim deed from Dawes and Thompson to the Florida Colonization Company which constitutes its color of title, is subdivided into forty-acre lots, so that by the very terms of our Statute to constitute adverse possession under color of the paper title, the Colonization Company, the grantor of the defendant, must have actually occupied every forty-acre lot in the twenty sections named in its quitclaim deed from Dawes and Thompson in 1899.

When this deed described the land by these several sections it defined the boundaries of each section by the lines run by the United States Surveyor on the grounds, and each section was the largest separate parcel named in the deed.

A KNOWN LOT.

A quarter-quarter-section or forty acres of land surveyed as public land, as this land was surveyed according to the official

plats in the United States Surveyor-General's Office and as it was deeded up to the deed to defendant, is "a known lot" within the meaning of the Statute defining constructive possession.

Kendrick vs. Latham, 25 Fla., 819—6 So. Rep., 875.

The doctrine of adverse possession is to be taken strictly. This because of the shortness of the limit of our Statute, our sparse population and our extensive domain.

Coogler vs. Rogers, 25 Fla., 853—7 So. Rep., 395.

The Courts will never extend the Statute of Limitations by implication or construction.

ENTRY NOT UNDER COLOR OF TITLE.

The deeds in the prior chain of title and the deed from Sanford to Dawes, Thompson and Norris (record, page 896) and the deed from Dawes and Thompson to the Colonization Company (record, page 883) do not agree in description. The deed from Sanford described the land as sections 10, 11, 12, 13, 14, 15 and 16 and "part" of other sections. The deed to the Colonization Company described the same full sections and the S½ of sections 1, 2, 3, 4 and 5 and N½ of sections 20, 21, 22, 23, 24 and E½ of sections 8 and 17. The plat attached to the patent (page 842 of the record) shows that section 37, township 19 south, range 28 east, and section 41, township 19 south, range 29 east, do not embrace the last above described lands, most of which is undisputedly land belonging to the United States until patented.

Can an occupancy of lands which may be in the deed to the Colonization Company affect lands in the patent not in that deed?

See patent to Drawdy, page 861 of the record, which covers the lands on which the cabin stood (pages 566 and 568 of the record).

The testimony clearly shows that the actual occupancy of the land, under color of the tax deed which occupancy was had prior to the issuance of the patent, was limited to portions of what is designated as section 9 according to the United States survey (pages 267, 275, 283, 292 of the record); that this occupancy ceased about the time of the "big freeze" (1895) and that

since 1895 there has been no occupancy whatever—certainly no such occupancy as constitutes adverse possession of even a single section (record pages 220, 224, 274, 276, 278, 279, 284, 324, 551, 830).

The testimony further shows that the deed to the defendant, May 3rd, A. D. 1900, is the first color of a title to the tract of land as described in the patent or to the whole of the lands patented (except 60 acres) since the tax sale holders began to make conveyance thereof (see this deed printed on pages 32 and 33 of the record).

NOTE.—The index erroneously states this deed is printed on page 868.

HAS THERE BEEN AN ADVERSE POSSESSION OF THIS TRACT OF LAND BY THE DEFENDANT UNDER COLOR OF TITLE?

Admitting for the purpose of this argument that defendant has color of title, it has never been in adverse possession of the land patented to complainants.

First—It has had no occupancy of the lands patented.

Second—It has had no such occupancy as our Statute requires to constitute adverse possession.

Third—Our Statute does not provide for a constructive possession of a large tract of land. As to large bodies of wild lands title can not be acquired in this State by constructive adverse possession.

The testimony fails absolutely to show such possession and occupation as comes under any of the four subdivisions of Section 6, Chapter 1869, Laws of Florida; Section 1290, Revised Statutes; Section 1721, General Statutes, which section is printed on page 160 of this brief.

It does show a wandering about and camping on the land by a watchman (page 277 of the record), but we find nothing in the Statutes which disseizes the holder of the legal title by such acts of an adverse claimant or his agent. Our Statute has defined the possession and occupation required to constitute adverse possession to oust the possession which follows the legal title.

The question put to the witnesses indicates that defendant hopes to obtain the benefit of clause 3 of paragraph 2, Section 1721, General Statutes, Section 1290, Revised Statutes, providing that land shall be deemed to have been possessed and occupied where, though not enclosed, it has been used for the supply of fuel or for fencing timber for the purpose of husbandry, or for the ordinary use of the occupant.

As before stated our Statute enacted in A. D. 1872, was copied from the New York Statute and must be construed as that Statute was construed prior to its enactment as a law of Florida, only more strictly because of the omission from our statute of the words "or of some part of said premises."

In A. D. 1863 this Statute and this clause was construed by the highest Court of New York as having no application to large bodies of wild land.

In the case of Monroe vs. Merchant, 28 New York, page 9, on page 43, Chief Justice Denio reviews the several subdivisions of Section 10 of the New York Law, which is there printed on page 25 where it will be seen to be word for word clause 2 of Section 1721, General Statutes of Florida.

The Court says (page 42):

"The precise point is: whether so large a tract of forest land can be said to have been possessed and occupied, in consequence of the limited amount of cultivated land under the circumstances here shown.

"These constructive possessions have always presented difficult questions, and the legislature in the revision of 1830 undertook to lay down principles which should govern them."

He then quotes from the Statute which agrees with paragraph 1 of Section 1721, General Statutes of Florida, except as to the time, it being twenty years in New York and seven in Florida, and then says as to the Act corresponding to Section 2 of our Section 1721, General Statutes:

"An unenclosed parcel of land is to be considered possessed and occupied when it has been used for the supply of fuel or fencing timber for the purpose of husbandry or the ordinary use of the occupant.

"So large a tract of forest would not be within the intendment of this provision." (Page 43.)

The Court was speaking of a tract of 1,500 acres.

The doctrine of adverse possession in this State as well as in New York now rests wholly upon statutory provision.

As stated by Chief Justice Gilfillan in St. Paul vs. Chicago Railway Company, 45 Minn., 396, the usefulness of the cases and the textbooks cited as guides has been mainly done away with by the Statutes.

The doctrine of constructive possession did not exist at Common Law. The idea is confined to the American Courts, and was adopted because of the fact that in new countries the enclosures and improvements usually embrace only a portion of what actually belongs to the several farms.

Bliss, J., in Frigate vs. Pierce, 49 Mo., 441.

The New York Statute which the Florida Statute copies was construed by Mr. Justice Woodworth in Jackson vs. Woodruff, 1 Cowen, page 286 (A. D. 1823):

"But if the deed had been perfect in the description and included 783 acres of Frizwell's patent, the occupancy of a part would not make out an adverse possession of the whole quantity conveyed."

"The doctrine of adverse possession, applied to a farm or a single lot of land, is, in itself, reasonable and just."

He further states the reasonableness of the rule as applied to small tracts, and concludes as follows:

"The attempt to apply the same rule to cases where a large tract is conveyed would be mischievous indeed. Suppose a patent granted to A. for 2,000 acres; B. without title conveys 1,000 acres of the tract to C., who enters under the deed claiming title, and improves one acre only; this inconsiderable improvement may not be known to the proprietor, or if known, is disregarded for twenty years. Could it be gravely urged that there was a good adverse possession of the whole 1,000 acres? If it could, I perceive no reason why the deed from B. to C. might not include the whole patent, and, after the lapse of twenty years, equally divert the patentee's title to the whole, for there would exist an actual possession of one acre, with a claim of title to all the land comprised in the patent. No such doctrine was ever intended to be sanctioned by the Court."

Mr. Justice Earl in Thompson vs. Burhans, 61 N. Y., 52,

text page 70, says the rule as above expounded has been embodied in the New York Statute; that the farthest a case in that State has gone is to hold that where a person claims title under a deed and thus has color of title to a farm or lot of proper size to be possessed for a farm, or to be used and managed in a body, according to the custom and business of the country in which it is situated, and is in possession of a portion of the same, then he is constructively in possession of the whole. The rule has never been applied to a tract containing thousands of acres (page 68).

FURTHER NEW YORK CASES.

In Miller vs. Long Island Railway, 71 N. Y., page 380, text 384, the same Judge said:

"If one take a deed of a farm, partly improved and partly unenclosed woodland, and he enters into possession of the improved land and occupies it, he will be deemed in possession of the woodland, if of suitable size, to be kept for the balance of the farm,"

and denied that there could be any constructive possession to ripen into title over unenclosed wood lands, which was not a parcel of improved farms, or was not used habitually in connection with the improved lands for firewood and timber, and denied that it is law that one can take a deed of such land from one not shown to own it, and then enter and take wood from such land and so acquire a possession of it.

The case of Thompson vs. Burhans was again before the Court of Appeals of New York and reported in 79 N. Y., 93, for the recovery of a tract of 4,000 acres. The facts in the case as to occupancy are like those in the case at bar.

Mr. Justice Earl, in discussing the facts, says that the cutting of logs and building a cabin did not constitute possession nor constructive possession; that to constitute a constructive possession a person "must have a written conveyance of land, and he must enter into actual possession of a part thereof, claiming the whole;" but that the part not actually possessed must be for use with or subservient to that actually possessed, and have some necessary connection therewith.

"One may purchase and take a conveyance of land for a farm, and take actual possession of but a small part thereof, and the balance unenclosed may be kept for future improvement and for firewood and fencing and building timber, and he will have constructive possession of such unenclosed land. But such constructive possession will extend only to such lands as is used with the improved land actually possessed, and so much as is reasonable and proper for that purpose, according to the custom of the country" (page 100 text).

The learned Judge concludes his argument in a phrase applicable to the testimony in the case at bar. He says:

"Passing around land or over it, asserting title ever so loudly, does not give possession."

The conclusion of the Court was that as there was no attempt or intent to improve any portion of the land, and no part was enclosed or possessed for the purposes of a farm, and the shanty and barn built on it were not erected for permanent use, but merely for the purpose of giving possession, and this large tract was not intended for use as one farm or in any way subservient with that actually possessed, that under no authority found in New York could there be a constructive possession of any part of the tract of 4,000 acres.

The same rule is declared to exist in Vermont.

Chandler vs. Speer, 22 Vt., 388.

The construction given by the Supreme Court of Pennsylvania is that though residence is not necessary to adverse possession, enclosure and cultivation is.

As to unenclosed and uncultivated land possession can only be proved by proving title.

Harlan vs. Harlan, 15 Pa. St., 515.

REASON OF THE RULE.

Remembering that our Statute is copied from that of New York, their decisions construe the Florida law as much as if rendered by the highest Court of Florida.

That these decisions are fatal to the contentions of the defendant is conclusively shown by reference to that part of the New York Statute that was rejected when it was enacted as

the law of Florida. As before stated, the New York Statutes extend the constructive possession to any person who has entered into and had continued occupation of the premises included in the deed under which he entered or of some part of said premises.

Our Statute has excluded the words "or some part of said premises." How much more, then, is strengthened the argument and reasons announced in the New York opinions cited, that our Statute has no application to large bodies of wild, unenclosed wood lands, and as to those there can be no constructive adverse possession.

That this is the law is also demonstrated upon principle.

Our Statute has reduced the time in which the legal title will be barred from 20 to 7 years. Our Supreme Court holds in contradistinction to the principle of all English Statutes of Limitations that the running of the Statute not only bars the assertion of his title by the true owner, but that adverse possession for 7 years actually confers title, as much as if the true title was transferred from the true owner to the adverse holder.

Watrous vs. Morrison, 33 Fla., 261—14 So. Rep., 805.

Following this reasoning to its logical conclusion, upon the contention of appellant, a person taking a paper title from one having no interest in the land and then putting a watchman on or near it, with instructions to warn off or threaten every other trespasser will thus acquire the legal title to great tracts of timber lands. If this be the law how can a non-resident or even a resident not on the land buy and hold timber lands in Florida, without also keeping a watchman employed to guard it, and of what avail is the law that seizin follows the title?

Can it be the intent of the Statute that 7 years of such claim to a possession is to confer title? If so what is the necessity to pay money for the thousands of acres of wild lands in Florida? Better do as the appellant has done in the case at bar, build a shack somewhere on a 5,000 or 10,000 acre tract extending over 5 or 10 square miles, hire a man to sleep in the cabin once a week, pay the tax levied on the land and in 7 years you have acquired it with the outlay of a few dollars. If the land owner resides out of the State and especially if residing in a foreign country such acquisition is made easy.

The burden of proof of all essential facts requisite to give title by adverse possession is upon him who asserts such prescriptive title.

Wilkins vs. Pensacola Co. 37 Fla., 36 Text, 59—18 So. Rep., 20.

Where a Court can see that the Statute will defeat a just claim it will require a party to come within its very letter.

The testimony in the case at bar shows that the watchman put on guard by the defendant abandoned it every little while and slept at home, did not visit it for months (pages 272, 277, 322, 323, 324, 338, 340, 367, 411 of the record).

Being but a mere intruder, whenever his actual occupation of the shack, if it was on the land, ceased he no longer remained in contact with the soil and the constructive possession became and was in the true owner.

The testimony shows such abandonment at a late date, so that if the former occupants of the shack were in adverse possession it has been broken, and seizin by the true owner regained by the abandonment or removal of defendants' watchman (pages 338, 367, 410 of the record).

FLORIDA CASES.

The Court is specially asked to examine the case of Wilson vs. Jernigan, 57 Fla., pp. 277-310. In that case the tax title was taken in 1869, the land was for thirty years logged, and leased, and turpentined from 1903 for three years, all under the adverse claim derived from the tax sale and alleged tax deed.

The Court held that such acts were insufficient to acquire title by adverse possession, so clearly so that it reversed the judgment of the lower Court for refusing to grant a new trial.

If that case controls here as a proper construction of Section 1721, General Statutes of Florida, as it must, then appellants' contention of title by adverse possession is ended.

See also McKinnon vs. Johnson, 59 Fla., 332, where the Court comments upon the statutory methods of acquiring title by adverse possession. As to certain wild lands it says of acts similar to those in the case at bar, "paying taxes and riding and walking over them," such acts of possession may be sufficient

under a legal title, but they are inadequate to show the acquisition of title by adverse possession, text page 342.

In the case of Wilkins vs. Pensacola Company, 37 Fla., 59, the Court says as to several lots in a large tract of land, which it was claimed had been acquired under a prescriptive title, that there had been a failure to establish the essential facts to make a prescriptive title. "There is no proof of substantial enclosure, cultivation, improvement or occupancy of any definite portion of the tract by any of them continuously for seven years," etc.

Where a tract of 2,500 acres was enclosed by a barbed wire about four feet from the ground and two smooth wires eighteen inches apart below, and some logs and wood cut on the land by the holder of a tax deed, this was not such an enclosure as the Statute required where the cattle of the neighborhood roamed over the land.

Adams vs. Fryer, 59 Fla., 111.

Taking the dead wood off of a tract of land two loads a week, even if continued for more than seven years, and occasional cutting of fence posts on it, did not constitute such adverse possession as required by the Statute.

In this case the holder under the tax deed of a forty- and ten-acre tract offered evidence that his tenant burned charcoal on the land and cut wood on it.

Hyer vs. Griffin, 55 Fla., 560-569, Cited in 56 Fla., p. 788, text.

The cases cited on page 109 of appellant's brief on the merits are either not in point or sustain the contention of appellees.

NO OCCUPANCY.

Appellant has never had any occupancy of the lands in controversy.

In Gould vs. Carr, 33 Fla., 523—12 So. Rep., 259, the Court says:

"Unless the adverse claimant is so in possession of the land that he may at any time be sued as a trespasser the Statute will not run in his favor."

See Dallam vs. Sanchez, 56 Fla., text page 788.

Appellant's counsel in their brief, page 120, admit that there has been no residence on the lands.

THE CABIN NOT ON THE GRANT.

It is argued in appellant's brief on the merits (pages 109 to 118) that the south line of appellees' land is more than four chains south of where located by the patent.

The cabin built by the defendant for its watchman to sleep in is proved to be located on land patented by the United States to one Drawdy as part of Section 21 **before the ruling of the Commissioner of the Land Office was reversed by the Secretary of the Interior and the claim of Teresa Rodriguez was recognized by the United States** (page 861 of the record).

After the Drawdy homestead in Section 21 was patented, the United States did not have any title to the lands on which the cabin was built to convey to the heirs of Rodriguez and could not have included that land in the patent for the Rodriguez claim.

A survey by the United States of a confirmed private land claim is only to complete the survey of the public lands. Section 2223, Rev. Stat.

The United States did not assume to convey to appellees any of the Drawdy homestead. It patented 5,486.46 acres by metes and bounds set out in the patent. Of the lands within the section lines of Sections 20, 21, 22, 23 and 24 of Range 28, and Section 19 of Range 29 it patented to appellees only the north 5 chains and 35 links. All else was disposed of under the public land laws, and patented to others.

APPELLANT'S CLAIM OF ADVERSE POSSESSION UNPRECEDENTED.

The attempt of appellant to force into the patent to appellees' lands they never claimed, to enable appellant to make out an adverse possession to 5,486.46 acres appellees do claim, is without precedent in the history of land cases.

A patent from the United States upon confirmation of a private claim * * * must be taken as correct until vacated

not only as to the validity of the claim, but as to the boundaries established.

Knight vs. U. L. Ass. 142 U. S., 161 (39-989).

If this extraordinary departure from principle could be allowed yet appellant failed to establish that the cabin was upon land described in the field notes as within the lands surveyed as the grant to Marcos or Rodriguez.

Appellant offered in evidence the official plat of township 19, S. R. 28, E., with the survey of the grant outlined thereon, and the official field notes of the survey on which the plat was made (page 1029 and pages 377 and 935 of the record).

Appellant is bound by the evidence it put in the record, and is estopped from discrediting its own evidence.

But if not, the testimony offered of surveyors to prove that the field notes did not exactly correspond with a pond and the spring run (pages 790 and 796 of the record) was not sufficient to establish that the field notes were incorrect.

Where the lands are granted according to an official survey the plat itself, with all its notes, lines, descriptions and landmarks becomes as much a part of the grant or deed by which they are conveyed and controls so far as limits are concerned, as if such descriptive features were written out on the face of the deed or grant.

Cragin vs. Powell, 138 U. S. 691 (32-567).

THE FIELD NOTES CONCLUSIVE TO LOCATE THE LAND PATENTED.

There was no natural boundary. Stakes if set are not monuments. The patent from the United States, in this case a conveyance of title, is by the plat and courses and distances which must control.

In the patent the field notes of the survey of the patented land are written out therein (p. 839 of the record). On the plat made a part of the patent the east and west lines of the grant are 168 chains in length and this distance is measured and marked in four public survey sections on each side. It is impossible to extend these side lines more than 4 chains and have a survey at all like the plat.

The field notes of the survey in 1851 are full of measurements to the corners set on the ground by the previous survey of the township into thirty-six sections, made in 1849 by Norris.

See plat of township 19, appellees' Exhibit D, page 1026 of record.

Defendants' witnesses seek to ignore all those notes and descriptions and discredit the field-notes by the alleged discrepancy as to where the south line cuts a pond and creek or run (pages 591, 597, 603, 625, 627, 640, 667, 700, 702 to 704 of the record).

The survey began at the northwest corner of the grant; the point on which the location of the cabin hangs is the length of the west line. To establish that the distance given in the field notes must control because this distance is verified by measured distances not disputed to the corners of the several sections abutting on the west and east lines of the grant recited in the field notes and in the patent, and the location of the north line is undisputed.

This west line is verified at the north line of Section 3, at the north line of Section 17, and the north line of Section 20, and then runs 5 chains and 35 links to the southwest corner of the grant.

See plat pages 1027 and 1029 of the record, the one the exhibit of appellees, the other of appellant.

The east line is 168 chains, the same as the west line, and it is likewise verified by the section corners of Sections 6, 7, 18 and 19 of Tp. 19, Range 29.

Appellant admits the several verifications of this west line, but after it leaves the north line of Section 20 at 162.65 chains from the starting point, appellant's witnesses seek to prove by trees blazed that in chaining 5 chains and a half the surveyor ran ten chains or as much more than he recites he did run. If the field notes are correct as to the distance of each section corner, as appellant admits they are by its failure to offer any evidence to the contrary, it is not within the bounds of reason that the surveyor made an excess of more than four chains in running 5 chains 35 links.

There can be no doubt that these blazes on the trees were made by Beardall thirty odd years ago (see pages 215, 272, 320,

322, 398 to 400 of the record) and not by Williams sixty years ago, though the three witnesses for defendant declared the blazes all look just sixty years old. Testimony of witness Howard supra.

Their testimony upon this age of blazes on pine trees proved to have been annually burned over and to have the bark about them creates a doubt because of its harmony. To an ordinary man it would be impossible to determine the age of such blazes after they were twenty or twenty-five years old, but these witnesses all concluded these blazes were sixty years old.

APPELLANTS' WITNESSES DISCREDITED.

Owens' testimony is discredited by his testimony early in the case when he located the grant lines by the field notes of the grant without questioning them (pages 399 and 293 of the record) and by the fact that he is shown to be the man who suggested to appellant the purchase of this land, who located the cabin and hired the watchman, and who was its chief agent in the obtaining of testimony. Owens attended all or nearly all of the hearings held, and admits he procured the witnesses and talked with them as to their testimony.

The location of the southwest corner of the grant was the ultimate fact to be proved. The finding of a lightwood post at a point other than where it should have been, according to the field notes, is not of itself evidence. A corner post of a blazed line would be evidence of a line located on the ground. The post and blazed line appellants' surveyors claim to have found would be evidence of weight were it not established by evidence that the grant lines were not to be found before Beardall surveyed them about A. D. 1887. See pages 251 and 780 of the record.

The Court will realize the necessity that confronted appellant to make proof that the cabin was situated north of the south line of the grant.

Its witness, Owens, selected the location of the cabin. His interest is apparent. If he failed to put the cabin on the grant his failure greatly prejudiced his company. This same witness before it was discovered that the cabin was on the land patented

by the United States to Drawdy, twice testified that the section lines of Sections 21, 22, 23 and 24 of the survey of Township 19 as public lands in 1848, ran about 70 yards inside the grant, pages 293 and 399 of the records. After appellees established that the cabin was not on the grant, Owens was equally sure these section lines were more than nine and a half chains inside the grant.

It is notable that appellant's surveyors refused to run the east line of the grant. The location of the southeast corner of the grant would have gone far to settle the location of the south line of the grant as actually surveyed in the field.

Appellant's witness, Howard, said the south line of the grant never was actually run out in the field, but was only office work, page 790 of the record.

First he testified that Williams ran the south line in the field 4 chains south of the point Williams says in his field notes he ran it, then he testifies that Williams never ran any line at all in the field, and produces documentary evidence to verify his testimony as to this (pages 618 and 796 of the record).

This witness says he verified in the field, the field notes of the United States survey of the grant on its north line and its west line and that the surveyor located the grant lines according to the field notes as to those lines. If this is proved or admitted it concludes the contention against appellant, because if the west line of the grant was faithfully located in the field, according to the field notes given from its northwest corner to the north line of Section 20—one hundred sixty-two chains and sixty-five links, it is not to be believed that in chaining five chains and thirty-five links the surveyor made a mistake of more than four chains.

He is discredited by his testimony that before he began his survey he was told that it was necessary for appellant's case that the south line of the grant be found south of where the shanty was located (page 604 of the record).

Note: In the copy of the field notes printed on page 935 the figure one has been omitted in the note of where the grant line crosses the north line of Section 20. See page 852 of the record where the note is correctly printed.

OFFICIAL SURVEY OF THE LAND.

Prior to 1847 this territory was entirely without survey. December, 1847, Deputy Surveyor R. W. Norris surveyed this township and marked the sections.

See Exhibit No. 10, page 1026 of the record.

Also certified copy of field notes of section 21, township 19, South Range 28, East. Appellees' Exhibit No. 33, page 976 of the record.

The exterior lines and the section lines were, in this way, officially established in A. D. 1848, before the grant was surveyed and defined, and by these established lines the grant was afterward defined.

In January, 1851, Marcellus A. Williams made a survey of the grant which was approved June 20, 1851, by the Surveyor-General of Florida, but not by the Commissioner of the General Land Office until A. D. 1894.

See Exhibit of appellees attached to bill, page 1027 of the record.

See Exhibit No. 37 of appellant filed February 11, 1911, page 1029 of the record.

See also certified copy of the United States field notes of the Williams survey filed as Exhibit by the appellees, page 851 of the record. They also are set out in the patent, page 840 of the record.

See copy of same field notes filed as Exhibit by appellant August 24, 1909, and at that time accepted and adopted as correct by the appellant.

Appellant's Exhibit No. 27, page 935 of the record.

The Court will note that these two copies of the field notes are precisely alike and the appellant accepted the correctness of the survey, until it was informed by the appellees that the cabin was not on the grant.

It will be noted that the survey of the grant begins in the official field notes at the northwest corner (see field notes, record pages 851 and 935), runs south 2.50 chains and ties with the north line of section 8. The letter X in the field notes signifies "crosses." X N line section 8 means crosses the north line of section 8.

Runs south 80 chains and 10 links and ties with and crosses the north line of section 17.

Runs south and at 162.65 chains crosses and ties with the north line of section 20 and ends at 168 chains (5.35 chains south of the north line of 20). Thus the true southwest corner of the grant is established. The line then turns east. These are the field notes and there are three points on the west line of the grant from which the true location of the southwest corner can be and is verified by measurement.

(See rule 27, Rules of General Land Office, for restoration of obliterated corners).

TESTIMONY OF APPELLEES' WITNESSES.

Appellees had these field-notes verified by Mr. S. A. Robinson, many years county surveyor of Orange County, and he testifies that they tied in at the points of intersection as above named, that he, using the government field-notes, began at the northwest corner of the grant, ran the whole west line according to the field-notes and established the southwest corner of the grant (see page 558 of the record) slightly beyond point claimed but explained this by use of steel tape instead of old link iron chain, a fact well known to surveyors.

Before starting south he fully established the northwest corner (page 558 of the record).

The Court will note that if the surveyor commenced at the point appellant now claims as the southwest corner and goes north—to-wit: commence 9.57 chains south of the north line of 20—he will not be able to tie with a single line given in the official field notes.

The test applied by all Courts where a measurement is doubtful is to reverse the order of the survey.

The section lines having been previously established by the government, and the grant having been laid out therefrom, must stand as the correct standard of location. As above stated none of them are in conformity with the distances given in the field-notes if the southwest corner of the grant is where appellant claims it to be.

From this southwest corner as established by Mr. Robinson

by the field-notes and by actual survey upon the ground, he went east and found the cabin to be south of the south line of the grant (page 564 of the record) and northwest of the sulphur springs (page 563 of the record).

This spring is a natural monument and is properly located on the plats in evidence. See Exhibit to the bill marked "D," appellant's Exhibit No. 1, and appellant's Exhibit filed February 11, 1911, pages 1027-1029 of the record.

The testimony of Mr. J. O. Fries, whose reputation as a skilled surveyor is well recognized, establishes that the cabin is located 9 chains and 13 links south of the north line of section 20 (page 555 of the record), and therefore south of the grant described in the United States field-notes.

Mr. Fries testifies positively that he used the United States field-notes and located the southwest corner of the grant at 5.35 chains south of the north line of section 20; that the section corners were in the same position as verified by him thirty years before (page 553 of the record).

The question was asked him: "Where is that cabin located with reference to the public surveys?" He replied, "It is in fractional N ½ of N E ¼ of section 21, township 19, South Range 28, East" (pages 55 and 556 of the record).

Note the following in Mr. Fries' testimony:

"Please state from your examination **on** the grant, if you are satisfied that the south line of the grant, as laid out by the United States survey, runs north of the small cabin you have testified to?"

"It does."

"How far north?"

"Three chains and 78 links."

"Do you, or do you not, as an expert surveyor, say that the cabin is not on the grant?"

"It is **not** on the grant." (Page 555 of the record.)

After having these fully qualified surveyors make these investigations, appellees had a separate and independent determination of the fact made by the well-known civil engineer, W. A. Beasley, who has done work for the government upon disputed lines (page 565 of the record). Mr. Beasley surveyed

the portion of the Drawdy homestead lying in section 21, the fractional east half of the northeast quarter of section 21.

This homestead was patented to heirs of Drawdy, August 1, 1883 (see copy of patent filed by the appellees April 11, 1911, pages 861-862 of the record), this grant being eleven years prior to the Rodriguez grant patent and covering fractional W ½ of N W ¼ of section 22 and E ½ of fractional N E ¼ of section 21, township 19, south range 28 east, 138.40 acres, 21.60 acres less than 160 acres.

The object of this survey was to determine whether the cabin was on the Rodriguez grant or on the Drawdy homestead (page 866 of the record).

Mr. Beasley testifies he first located the four corners of section 21 by the United States field-notes (page 568 of the record), and found the cabin to be 2.50 chains south of the north line of fractional N E ¼ of section 21, which places it squarely on the Drawdy homestead covered by the patent of 1883. This survey was made from the south, locating the four corners of the fractional section, especially the south corners, and going north. The east line of fractional section 21 is 74.60 chains, so the cabin is located 72.10 chains north of the south line of section 21, the location of which is not disputed.

The Robinson and Fries surveys were from the north going south, both surveys reaching the same results.

After appellees had put this testimony in, appellant had Mr. L. J. Owens, who has been in the employ of the appellant fifteen years (pages 403-812 of the record), and Mr. Howard, also an employe at times of the company, and Mr. Morehead, county surveyor of Marion county, make a survey. The gist of their testimony is that they admit the cabin to be south of the line as patented to Rodriguez, and consequently south and within the line as running east from a point 9.57 chains south of the north line of section 20; that there was a blazed line in the woods at that point which was, in their opinion, the south grant line.

They filed a sketch map March 13, 1911, which shows their location of the cabin to be 63 feet north of their alleged line, which places the north side of the cabin within a very few feet of where located by Mr. Fries (page 555 of the record), and

clearly south of the grant line by several chains, as fixed by the United States surveys and field-notes confirmed by Mr. Fries and Mr. Robinson and Mr. Beasley, and Mr. Ginn, another surveyor employed by the appellees, and south of the true line as admitted by the appellant in and by the plats and field-notes filed in evidence by appellant, as above recited.

Appellant's surveyors' claim is simply that there is a blazed line through that part of the woods below the grant line as designated by the field-notes, which they testified they believed to be the south grant line, but there is no evidence of old residents or other disinterested persons introduced to show that said line was made A. D. 1851 by Marcellus A. Williams, the United States surveyor; Mr. Howard going so far as to impeach the government surveys in so far as the same interferes with his contention and testifying positively that the south line of the grant was never run on the field, but was all office work (page 790 of the record).

THE BEARDALL LINE.

There is evidence showing that one William Beardall made a survey of the grant for the Florida Land and Colonization Company over twenty years ago. (See Beardall's testimony in the testimony rei perpetuam, page 954 of the record; Albert Royal's testimony, page 780 of the record, and other testimony for the appellant, pages 251, 272, 320, 322, 329, 398 to 400, 418, 460, 484).

This accounts for the inaccurate placing of a post for the southwest corner of the grant at 9.57 chains south of the north line of section 20, and for the alleged blazed line running east from that point and which it is necessary to prove to be the Williams survey made A. D. 1851, to take in the cabin.

Howard, witness for appellant, admits under cross-examination (page 797 of the record) that if the plats and field-notes of the government are correct the grant corner cannot be 9.57 chains south of the north line of section 20.

The same admission is made by L. J. Owens, witness for the defendant (page 819 of the record).

BEARDALL SET THE SOUTHWEST CORNER POST.

Mr. Albert Royal, for appellees, testified that Beardall surveyed some of the lines of the grant and that he, Royal, helped him, but not on the south line. That prior to Beardall's running the lines there were no lines a person traveling through the country would notice; that he never knew where the lines were until Beardall ran them (pages 776-780 of the record). That there was no large corner post at the point now claimed as the southwest corner of the grant (9.57 chains south, etc.) prior to the Beardall survey (page 773 of the record). That his source of knowledge was from looking up lands for a real estate man (page 777 of the record; that he looked up the C. H. Cash purchase (page 777 of the record).

The Cash purchase covers lands in N E ¼ of N E ¼, section 20, township 19, south range 28 east, 78.08 acres (see patent, pages 862-863 of the record). That quite a while after the Beardall survey, he, Royal, saw the post there and took it for a new post that Beardall had put up. That there was no original government post at that point (page 777 of the record).

Mr. E. P. McCallum, who worked the adjoining lands for turpentine, and therefore had actual knowledge of the locality, testified that he worked there in 1899 to 1903 and that there were two corners about 200 feet apart (page 221 of the record), which shows that the true southwest corner must have been known at that time, to wit: the Marcellus A. Williams corner, and that the other corner was the one put up by Beardall.

There is no question Beardall ran the alleged blazed line.

He surveyed for the tax title claimant and naturally would seek to extend the grant to embrace as much land as possible, at that time the adjacent lands being probably unoccupied.

Before leaving Mr. Royal's testimony we wish to call attention that he pointed out to McIntosh, one of the Colonization Company's employes, when he was building the cabin for that company, which was built within a few feet of the present cabin (page 778 of the record), that he was building the cabin off the grant and on the Drawdy homestead; that McIntosh had helped Mr. Fries survey the Drawdy homestead (page 779 of the record). This cabin was later burned and Boykin built the present

cabin practically on the same spot about 4 years before he testified (page 373 of the record). This cabin was about ten feet by twelve feet in size. It was without any inclosure (pages 566-567 of the record).

Appellant has thus known, or should have known, that the cabin was off the grant and could in no manner be the basis of any adverse possession, and appellees were not required to bring any action to avoid the Statute of Limitations. They had a right to ignore appellant's claim of title to their lands until appellant made entry upon them.

NATURAL MONUMENTS.

Appellant sought to sustain the alleged blazed line at 9.57 chains south of the north line of section 21 by monuments mentioned in the field-notes, to wit: a grass pond and a sulphur spring branch, claiming the Beardall line was more nearly confirmed thereby than the true grant line named in the patents and plats.

The field-notes call for the grass pond at 51 chains.

Appellant locates it at 51.90 chains.

Appellees' surveyors, Beasly and Ginn, locate it at 50 to 52 chains (pages 731-757 of the record). The grass pond corresponds with the natural monuments called for by the United States field-notes (page 935 of the record). It is apparent from the testimony that this grass pond has in the last sixty years changed somewhat by a portion at the north end drying out, leaving, however, its former water-bed well defined on the ground by the water grasses incident to same. Mr. Ginn gives the pond as being 50 to 52 chains from the southwest corner and 6 chains across, part being water and part dry bottom, but well defined (page 757 of the record).

As to the monuments called for at the intersection of the east line of section 21, we frankly admit that they do not conform with the true line or with the blazed line.

The field-notes call for "83.80 chains cross west line of section 22 in edge of branch of white sulphur spring, 74.60 chains north of southwest corner of section 22, 85.00 chains cross branch or creek."

Neither line crosses "in edge of branch."

But full explanation is had in the testimony of Mr. W. A. Ginn (page 767 of the record), that "the branch has evidently changed;" that there were indications of a blind branch there (the intersection of the grant line with the section line (page 773 of the record), and same page); there were indications of change in the course of the sulphur springs branch; that if the line crossed the branch once it would not cross it again going east.

All of this is entirely confirmed by the plats and the field-notes.

See Exhibit "D" to the bill, page 1027 of the record.

The blind branch testified to by Mr. Ginn (page 773 of the record) is there shown. It comes from the northwest and crosses the east line of Section 21 at precisely the place called for by the field-notes and trending northeasterly independent of the sulphur spring branch, thus confirming Mr. Ginn's testimony that there were appearances of physical changes evident on the ground at this point. This we contend relieves any ambiguity as to the location of the point of crossing of the Grant line with the east line of section 21 because the sulphur spring branch does not fit the claim at this point, either of the appellant or appellees, as it now flows, but the physical indications, confirmed by the field-notes filed, which were evidently made on the ground and the actual platting do conform and these are all confirmed by the physical conditions detailed by Mr. Ginn —almost to a foot. It will be noted that the field-notes call for two crossings of water courses, "83.80 chains west line, Section 22 in edge of branch of white sulphur spring;" "85.00 chains X branch or creek," the word "run" is not used. We call especial attention to the plat and to the further remarks of Mr. Ginn whose work bears evidence of great research and persistent effort to reach the exact truth to be found on page 766, where he also states that the location of the line across the pond as contended by the appellees was more fully in acocrd with the field notes than the contention of the appellant.

Mr. Beasly also (page 732) testifies that the intersection of the south line of the Grant—the line at 5.35 chains—crosses the east line of Section 21 in the "edge of a dry branch, but not in

the edge of the branch that flowed from the sulphur spring." This is the strongest kind of testimony in support of the contention that the line at 5.35 chains is the correct south line of the Grant. This testamony and the testimony in regard to the pond fully settle by natural monuments the line appellees hold to be the true south line of the Grant.

The Court is asked to note that by the sketch filed by appellant of the line claimed by its surveyors to be the south line of the Grant (page 1030 of the record), the alleged Grant line crosses the run but once, which contradicts the field-notes. Their own evidence destroys their contention that the line nine chains south of the north line of Section 21 more closely agrees with the natural monuments mentioned in the field notes than the true line established by the Surveyors Beasley, Fries, Ginn and Robinson.

See appellant's Exhibit No. 37 (Exhibit plat filed February 11, 1911, page 1029 of the record), wherein there is shown two branches, one on the line between sections 21 and 22 and the other in section 22, exactly in place according to the government field-notes (page 935 of the record), and which will not be in place at any other point (both of the two last plats are appellant's exhibits).

How also may appellant stand on the field-notes of the United States survey to place the natural monuments on the south line of the Grant and repudiate all the field-notes which locate the southwest corner of the grant by the section lines on the west line of the Grant.

Appellees claim that the natural monuments confirm the line set out in the patent and the field-notes.

CONCLUSIONS OF THE SURVEYORS.

The conclusions of the surveyor will be found on pages 561 and 555 and 568 of the record. They found the true south line of the Teresa Rodriguez grant at 5 chains and 35 links south of the north line of section 21, which section line is admitted by all to be clearly defined and established.

This is confirmed by Mr. Beasley, who independently surveyed the Drawdy homestead in October, 1910, and set a corner

at the northwest corner of same. Later in March, 1911, he came across this same corner by a fresh survey, made at a different time, in a different direction and for a different purpose (page 568 of the record).

The post at the southwest corner of the grant is not an old government post. Mr. Ginn, the surveyor, says he took the post up and examined the part that had been in the ground and failed to find indications of age (page 759 of the record). If it had been in the ground since A. D. 1851 it would have shown its age or great age.

In 1907 no corner post was found at the 5.35 chain point, the corner established by Marcellus A. Williams, who made the survey under which the land was patented. There is a post at the Beardall corner, 9.57 chains, which is described by Beasley as marked "X. T. R." (page 725 of the record), and by Ginn as marked "X. T. R." (page 759 of the record). The stake described by Howard as standing at the southwest corner of the grant he states was marked "X. R." (page 791 of the record), and that the marking was exceedingly dim (page 792), and by Owens as marked "X. R." (page 809 of the record).

This post is described by Beasley and Ginn as of recent date, its lettering visible at 30 paces (pages 725-759 of the record), and not an old government post (page 759 of the record), it can not be the post set by the United States surveyor, Marcellus A. Williams, in A. D. 1854, because William Slade, witness for the appellant, son-in-law of George C. Powell, who lived on the grant and who certainly knew this fact, describes the southwest corner post as a plain light-wood post; he testifies that he had personally seen all of the corner posts except the southeast corner post. He was asked, "How was the grant corner marked?" "Why, just a lightwood knot taken and blazed on four sides and squared up and drove down" (page 287 of the record).

We call the special attention of the Court to this testimony of appellant's witness which completely destroys the claim of appellant that the post found 9 chains south of the north line of sections 20 and 21 is the corner post set by the United States surveyor in A. D. 1851.

ANALYSIS OF PATENTS ISSUED BY THE GOVERNMENT.

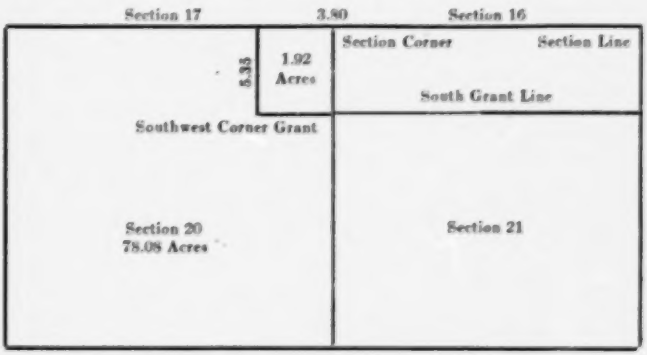
The United States, holding the fee until 1895 of the lands embraced in the patent to the Rodriguez heirs, conveyed to them only to the line which is 5.35 chains south of the established section line on the north side of section 20, as surveyed by Norris, the United States surveyor, in A. D. 1847.

This was as far as the government could convey, as lands south of that line had ben previously vested in other parties by the United States by patents to C. H. Cash, A. S. Matlack, the State of Florida, and to the heirs of Z. C. Drawdy, all of which conveyances antedated the issuance of the patent to the Rodriguez heirs nine to eleven years.

See copies of patents filed by appellees (pages 859, 861, 862 of the record).

United States patented to C. H. Cash, No. 6247, March 20, 1885, fractional E ½ of N. E. ¼ of lot 1 of section 20, township 19, south of range 28 east (see copy of patent filed March 11, 1911; appellees' Exhibit, page 862 of the record) is shown by the following diagrams:

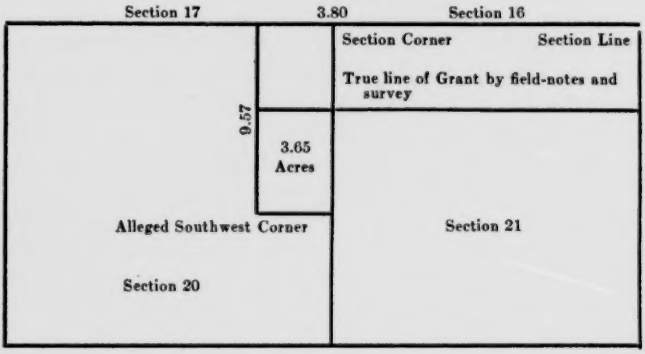
AS PATENTED.



78.08 acres patented
1.92 acres within the Grant by the true line

80 acres in E ½ N ¼

AS CLAIMED BY APPELLANT.



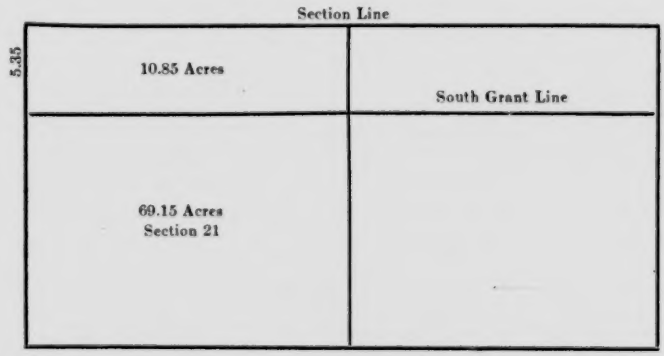
74.35 acres in Cash's tract by appellant's claimed line
5.65 acres within the Grant by appellant's claimed line

80.00 acres in E ½ N E ¼

Note the discrepancy of areas as deeded by the government and as appellant claims would require it to have been deeded.

United States to A. S. Matlack, patent No. 2754, June 20, 1883, to W ½ of N E ¼, fractional section 21, township 19, south of range 28 east, 69.15 acres. (See copy of patent filed as appellees' Exhibit, page 859 of the record.)

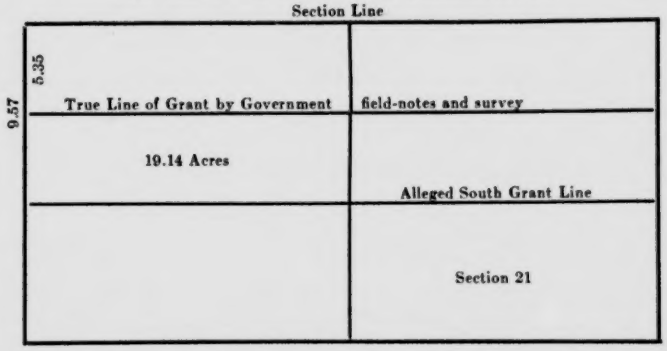
AS PATENTED.



69.15 acres patented
10.85 acres within the Grant by the true line

80.00 acres in W ½ N E ¼

AS CLAIMED BY APPELLANT.



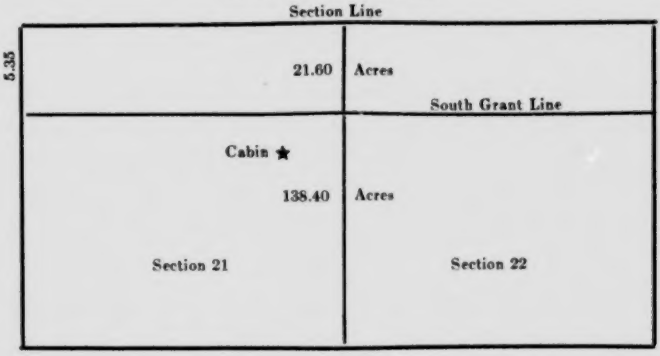
60.86 acres in Matlock tract by appellant's claimed line
19.14 acres within the Grant by appellant's claimed line

80.00 acres in W ½ N E ¼

Note the discrepancy in areas.

United States to heirs of Z. C. Drawdy, No. 2867, August 1, 1883, to W ½ of N W ¼ of section 22, and E ½ of N W ¼ of section 21, township 19, south of range 28 east, containing 138.40 acres. (See copy of patent as filed as appellees' Exhibit, page 861 of the record).

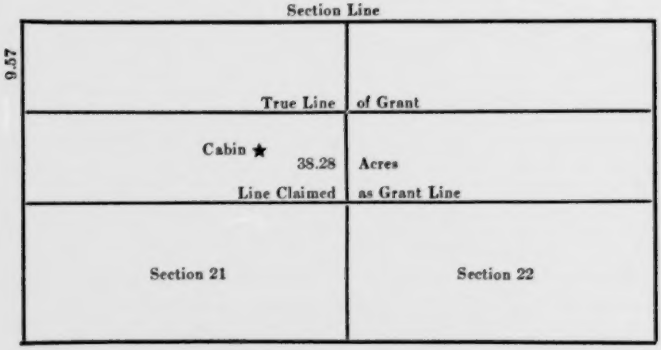
AS PATENTED.



138.40 acres patented
21.60 acres within the Grant by the true line

160.00 acres in the quarter section

AS CLAIMED BY APPELLANT.



121.72 acres in Drawdy tract by appellant's claimed line
38.28 acres within the Grant by appellant's claimed line

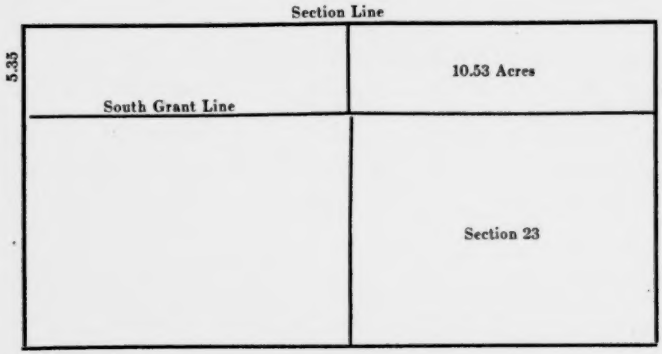
160.00 acres in quarter section

Note the discrepancy of acreage created by the lengthening of the west line of the Rodriguez grant to locate its southwest corner, 9 chains and 57 links south of the south line of section 17.

The United States patented the fractional E ½ of N E ¼, section 23, township 19 south, range 28 east, to the State of Florida.

The Internal Improvement Fund deeded No. 11,018, May 13, 1882, the same lands to A. S. Matlack, containing 69.47 acres. (See original deed filed as complainant's Exhibit, page 858 of the record.)

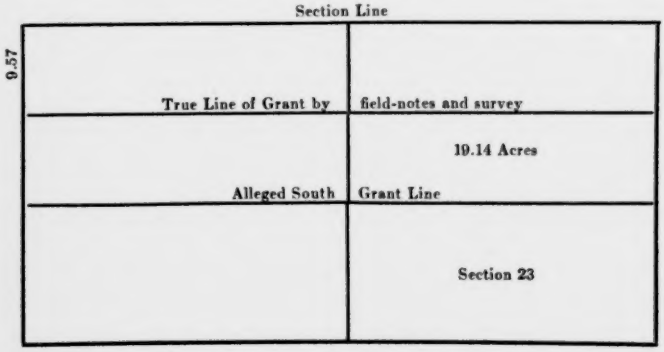
AS PATENTED.



69.47 acres in Matlack purchase
10.53 acres within the Grant by the true line

80.00 acres

AS CLAIMED BY APPELLANT.



60.86 acres to Matlack by appellant's claimed line
19.14 acres within the Grant by appellant's claimed line

80.00 acres

These diagrams and the acreage patented clearly illustrate the impossibility of the government's patenting these lands twice.

The foregoing is only a portion of the property patented away by the government prior to the patent to Rodriguez, and the above demonstration could have been multiplied.

Take each of these conveyances up separately, and the Court will see that the government had conveyed up to the grant line as described in the patent to appellees. This is conclusively demonstrated by the area of each patent and agrees with the field-notes and the published plats of the government. The government was powerless to patent to appellees the land up to the line claimed by appellant to be the south line of this grant, because others had vested rights in the land nine to eleven years previous to the patent isued to appellees.

The true location of the south line of appellees' land is fixed by these earlier patents.

Liddon vs. Hodnett, 22 Fla., text 454.

The claim of this territory by the appellant can not divest title from third parties who hold the conveyance from the United States. It is simply to do what? To enable appellant to claim an adverse possession of appellees' property lying within the true boundaries of the lands patented to such third parties as defined by the government's patents to them.

In other words, appellees must be compelled to take property they do not claim, so as to enable appellant to obtain an adverse possession of property which appellees do claim.

MEASUREMENTS TO KNOWN CORNERS THE TEST.

We do not dispute that the grant corners are to be established by the lines actually run and marked by the surveyor who made the United States survey.

We contend that the proper way to establish the lines actually run is not by the testimony of interested witnesses finding blazed trees where there have been later surveys, especially where the true line is connected with numerous known corners.

The west and east lines of the Rodriguez grant are tied into

four section corners by measurements, sections five, eight, seventeen and twenty on the west and Sections 6, 7, 18 and 19 on the east. There can be no excuse in such a case to claim that in running 5 chains and 35 links the surveyor has actually run 9 chains and over, as appellant contends is established by an alleged corner post found where Beardall probably set it in A. D. 1890 (page 777 of the record), and which could be moved from place to place.

The General Land Office issued a pamphlet of rules for the restoration of lost corners to the public surveys. On page 8, section 17 reads:

"All corners marked in the surveys returned by the Surveyor General shall be established by the proper corners of the sections, etc."

"Section 18. The boundary lines actually run and marked in the field shall be established as the proper boundary lines of the sections or subdivisions for which they were intended, and the length of such lines as returned by either of the surveyors aforesaid shall be considered as the true length thereof."

"Section 19. Each section, or subdivision of section, the contents whereof shall be returned by the Surveyor General, shall be held and considered as containing the exact quantity expressed in such return."

On page 11, section 27 reads:

"The identification of mounds, pits, barred memorials, witness trees or other permanent objects noted in the field-notes of the survey affords the best means of re-locating the missing corner in its original position. If this can not be done, clear and convincing testimony of citizens as to the place it originally occupied should be taken if such can be obtained. In any event, whether the locus of the corner be fixed by the one means or the other, such locus should always be tested and confirmed **by measurements to known corners."**

It was also testified by the witnesses for appellant, before any question as to the location of the cabin was raised, that the grant as laid out extended beyond the section lines all around, about seventy yards. L. J. Owens so testified (on page 399 and on page 293 of record). William Slade so testified (on page 265 of the record).

It actually extends 5 chains 35 links or about 350 feet or 116 yards, but appellant seeks now to extend it 90 yards more.

APPELLANT'S OCCUPANCY.

In regards to Wofford's occupancy there is great indefiniteness as to its time and its duration.

E. P. McCollum testifies the lands were "entirely unoccupied" in 1899 (page 220 of the record).

A. J. Driggers testified there was no one living on the grant in 1899; that he was living in three hundred yards of the grant at the time; went all over it and went often fishing and hunting (page 551 of the record), and that he never saw Wofford there (page 552 of the record).

We are led by the testimony to believe Wofford was not there when the Wilson Cypress Company took its deed from the Florida Land and Colonization Company in A. D. 1900.

The occupancy of Wofford when he was there was not of a nature to base any substantial claim of possession upon (see pages 279, 280, 282, 318, 347, 348, 352, 355, 359, 551, 552 of the record). L. J. Owens, himself, testifies that he was in charge of the grant several years after Wilson Cypress Company bought until Boykin built the cabin, and that he, Owens, lived at Caccia, and not on the grant, and gave up his superintendence to Boykin, who "built a little cabin," it being the cabin above mentioned, and that he stayed there in the cabin part of the time (page 340 of the record).

Appellees claim that the possession of the Florida Colonization Company was tortious; that it was ousted by the patent and the possession taken for appellees in 1895 by Col. J. H. G. Martin, and that appellant has never been in possession of the property at any time.

FORM OF THE ACTION.

The thirty-seventh assignment of error questions the right of a part of the common owners to whom the land was patented to sue for all.

The grant was made to Miguel Marcos and patented to his wife, Teresa Rodriguez, and her legal representatives (Act May 26, 1836, 5 Stat. L. 31).

Miguel Marcos and wife, Teresa, had three children: Miguel, Dorotea and Maria Gracia. They were born at St. Augustine, Florida. The church records at St. Augustine contained the register of the marriage of the grantee, Miguel Marcos, with Teresa Rodriguez, and the baptism of each of their three children (pages 199, 207-209 and 210 of the record).

The living descendants in the three branches from the common ancestors, Miguel Marcos and Teresa Rodriguez, numbered at the date of the suit thirty-three. During the seven years the suit has been pending certain of the complainants are known to have died.

The number was so great that numbers alone would have made it proper for a few to have sued for all, yet all the legal representatives of the grantee living when the bill was filed were named as complainants. To make proof that each of the named complainants was a descendant and legal representative of the patentee required the expenditure of so large a sum of money that it was determined after the case had been entered upon to further prosecute the suit in the name of a few for the benefit of all. The bill had been so framed that it might be done, and there was a common interest to be prosecuted for a common benefit, against a defendant that has been proved to have no estate nor interest in the subject matter of the suit.

Where the interest is connon and the parties numerous one or more may sue for the benefit of all.

West vs. Randall, 2 Mason, 181, Fed. Cases, 17424.
Scott vs. Donald, 165 U. S., 107, text 115.
Mandeville vs. Riggs, 2 Pet., 482-487.

APPELLANT NO GROUND TO COMPLAIN.

Upon what principle may the appellant object that less than all the legal representatives of the patentee had a decree? Upon what principle may the appellant complain if it be that some of the complainants named in the bill failed to establish that

they were of the legal representatives of the patentee, and among the persons to whom the patent ran and for whose benefit the patent issued? Appellant was as well able to contest complainants' rights whether prosecuted by all or by a representative class for all.

Where the real merits of the case may be determined without injury to absent parties it is the duty of the Court to decree as between the parties before it.

Mallow vs. Hinde, 12 Wheat., text 197.

The rule which requires all persons materially interested in the subject matter of the suit to be made parties to prosecute or defend is founded in convenience. If the Court is able to proceed to a decree, with justice to the parties before it, without injury to absent persons equally interested in the litigation the requirement is dispensed with.

See Note to Attorney General vs. Jackson, 11 Vesey, 365, Sumner's Edition.

Smith vs. Swormstead, 16 How., 288-302—14 L. Ed., 948.

Barney vs. Baltimore, 6 Wall., 280 (dissenting opinion, Clifford, J.).

In a suit in equity brought against parties in possession by one holding a prior grant to obtain the conveyance from defendant as trustee holding the legal title, Mr. Chief Justice Marshal, speaking for the Court, says:

"It is contended that he (complainant) is a tenant in common with others and ought not be permitted to sue in equity without making co-tenants parties to the suit. This objection does not effect the jurisdiction but addresses itself to the policy of the Court.

This equitable rule is framed by the Court itself and is subject to its discretion, being introduced by the Court for the purposes of justice (it) is susceptible of modification for the promotion of those purposes."

The rule that all persons materially interested ought to be parties is for the convenient administration of justice and with in the discretion of the Court.

Mechanics Bank vs. Seton, 1 Peters 299, text 306.

Where the interest of one person is involved in that of another and that other possesses the legal right so that the inter-

est may be asserted in his name it is not necessary to bring both before the Court.

Hopkirk vs. Page, 2 Brock. 20—Federal cases No. 6697.

Where there is a common title and a community of interest growing out of the nature and condition of the right in dispute one of a class may sue for all.

Scott vs. Donald, 165 U. S., 107, text 115. Citing the language of Mr. Justice Nelson in Cutting vs. Gilbert, 5 Blatchford 259.

If appellees have shown title in any of the complainants named in their bill they were entitled to a decree against appellant and this Court must affirm the decree.

Quoting from the case cited on page 80 of the brief for appellant from New Jersey "the whole title is before the Court," and one or more of the joint owners of the land may sue to clear the record title.

This is not a case where some of the heirs are contesting the title of any one of them.

APPELLANT NOT INJURED BY ALLEGED DEFECT OF PARTIES.

The appellant has in no way been injured by the absence of an interested party, nor because only eight of the legal representatives of the patentee were decreed to be such.

One tenant in common would have been allowed to maintain an action in this cause to protect his estate. One tenant in common may sue to remove cloud on title.

17 Enc. Pl. and Pr., 320, and cases cited.

Union, etc., Co. vs. Daugberg, 81 Fed., 73, text 90.

If some of the complainants named in the bill were not legitimate children, or if it should be that there were one or more of complainants' ancestors who died testate as to this land, so that the pleader had misstated the rights and interests of some of the complainants named in the bill, this would not have ousted the jurisdiction of the Court to give relief to the other interested parties, nor have deprived them of a remedy against appellant, nor in any way prevented the appellant from making full defense to the suit.

Bacon vs. Robertson, 18 How., 480, text 489.

The case of Payne vs. Hook, 7 Wall., 425, text 431, is applicable. There one of the distributees of the estate of an intestate sued the administrator. It was held that the other distributees were represented by the complainant, and as there was no controversy with such other distributees, they need not be made defendants.

Appellant may not assign as error the action of the trial Court in decreeing in favor of the eight complainants named in the decree and giving the other twenty-five complainants the benefit of the decree, since such a decree is for appellant's benefit. The eight complainants named in the decree are certainly entitled to relief. Had they sued for themselves alone the action could have been maintained, but appellant would most certainly have made objection that all others in like situation should be made parties to avoid further actions and that complete justice might be done in the one suit.

United States vs. The Old Settlers, 148 U. S., 427, text 480.

Cockburn vs. Thompson, 16 Ves., text 327, where Lord Eldon says: "Where the Court for convenience dispenses with the presence of parties, the principle leads it by future arrangement to find out the means of giving them an opportunity in some shape to come in."

West vs. Randall, 2 Mason, 181; Fed. Cases 17424.

Wood vs. Dummer, 3 Mason, 317; Fed. Cases 17944.

Campbell vs. Railroad Co., 1 Woods, 368; Fed. Cases 2366.

Cooper's Eq. Pl., 39.

2 Madd., 144-146.

Having brought the action as the appellant would have demanded it be brought, if we had not so brought it, appellant may not now object.

See Calvert on Parties in Equity, pp. 29 **et seq.**

Appellant has no more ground to complain because under the decree twenty-five of the complainants are given its benefit, and may in this suit establish, if it be held they have not done so, that they are of the legal representatives of the patentee, than it would have to have objected before the Land Depart-

ment that any of the parties there prosecuting for the issuance of the patent had failed to prove their interest in the land. One or a few could proceed for the issuance of the patent.

What benefit will enure to appellant to exclude from the benefit of the decree the twenty-five complainants named in the bill who have at this time failed to make strict proof of pedigree. The United States issued the patent for the benefit of all the legal representatives of Marcos, and the absence of any of the parties in interest could not prejudice their interests.

The decree has found and determined that the deeds under which appellant claims title are void, void against the eight appellees herein found and decreed to be legal representatives of the patentee from the United States, and therefore void against all other the legal representatives of said patentee. All did not need to sue to contest appellant's claims, but when success attends the contest the decree necessarily enures to the benefit of all having an interest in the lands patented.

Scott vs. Donald, 165 U. S., 107, text 116.

Even where there are conflicting interests and a part sue for all, the Court is required to enter a decree without prejudice to the rights of those not made parties.

McArthur vs. Scott, 113 U. S., 340, text 392—28 L. Ed. 1033.

That those persons named in the decree had the right to sue for all can not be controverted.

Scott vs. Donald, 165 U. S., 107, text 116.

Prentice vs. Duluth Storage Co., 58 Fed. Rep., 441.

17 Enc. Pl. and Pr., p. 320.

15 Enc. Pl. and Pr., p. 627 et seq.

The decree rightly finds that appellant has not acquired any right or interest in the land by occupancy, so that the only result of excluding from the benefit of the decree the twenty-five complainants other than the eight who made strict proof of pedigree from the church registers would be to force that twenty-five to bring some action to obtain the benefit of the decree. The Court would find a way to do substantial justice through this suit without requiring new actions, which might necessitate a multiplicity of suits.

Payne vs. Hook, 7 Wall., text p. 432.

Its decrees are intended to terminate litigation.

Caldwell vs. Taggart, 4 Peters, 190-202.

Even if the use of the words "parties in this suit" in the decree after the words "and as against all others, the legal representatives of said Teresa Rodriguez," on page 101 of the record, was improper, which we deny, it is not ground of error, so that the thirty-seventh assignment of error may be passed.

EQUITY HAS JURISDICTION.

By the thirty-second and thirty-third assignments of error the jurisdiction of the Court is questioned.

The cases cited in appellant's brief we think are not applicable to the facts in the case at bar.

Under the general equity practice a deed void on its face constitutes no cloud and complainant must be in possession, unless the land is alleged to be wild and unoccupied.

Such was the practice in Florida until in A. D. 1899 the legislature gave a new privilege by Chapter 4739, Laws, printed as Section 1950, General Statutes.

This statute authorizes a bill in equity by any person whether in possession or not against any person not in actual possession to remove cloud on title. That the adverse claim is void on its face is no bar to jurisdiction.

In the same year the legislature enacted a statute giving Courts of Equity jurisdiction of suits to enjoin the cutting of timber on woodlands. Chapter 3884, Laws, printed as Section 1919, General Statutes.

All of Section 1950, and the first clause of Section 1919, General Statutes, is printed on page 161 of this brief.

The bill alleges the lands are wild, uncultivated, uninclosed, unimproved, covered with a growth of timber, not now and never in the occupancy of any person—page 6 of the record.

Graham vs. Mortgage Company, 33 Fla., 356, 14 So. Rep., 796.

Any person claiming to own timbered lands has the right to

come into equity to protect them, and no actual possession is necessary.

Reddick vs. Meffert, 36 Fla., 637 (18 So. Rep., 859).

Where the laws of a State give a remedy in equity, such remedy will be enforced in the Federal Courts if it does not infringe upon the constitutional rights of the parties to a trial by jury.

Greeley vs. Lowe, 155 U. S., 74, citing many cases.

Cummings vs. Merchants Bank, 101 U. S., 153 (25 L. Ed., 904).

Clark vs. Smith, 13 Peters, 195, text 203 (10 L. Ed., 127).

It is not an objection to the jurisdiction of equity that legal questions are presented for consideration.

Holland vs. Challen, 110 U. S., 15 (28 L. Ed., 56).

This was a case where the law of Nebraska gave an action to persons claiming title to real estate, whether in actual possession or not, against any person claiming an adverse interest or estate therein, to determine such estate, and to quiet title. Section 1950, General Statutes of Florida, is practically the same law.

As was held in the case last cited, the statute enlarged the class of cases in which relief was formerly afforded by a Court of Equity in quieting title to real estate.

It may be conceded that the legislature of a State can not directly enlarge the jurisdiction of the Circuit Court of the United States, yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the Courts of the States.

Reynolds vs. Crawfordsville Bank, 112 U. S., 405 (28 L. Ed., 735).

Chapman vs. Brewer, 114 U. S., 158 (29 L. Ed., 88).

Apart from statute, upon settled principles a Court of Equity had jurisdiction upon the allegations and proof in the case at bar.

Rich vs. Braxton, 158 U. S., 375, text 406; 39 L. Ed., 1032-1033.

For the sake of argument admit appellant's contention that building a shack on 5,500 acres of land and sleeping in it two or

three times a week (see page 83 of brief for appellant) constitutes an adverse possession, yet even then appellant fails to show such a possession as would oust a Court of Equity of jurisdiction, because appellant's deed excepts therefrom certain lands patented to appellees, page 32 of the record.

It is in proof that this excepted land is unoccupied. Appellees having the legal estate are seized of this land claiming the entire grant and are therefore in possession of the whole of the grant not actually occupied by another under a hostile title.

Barr vs. Gratz, 4 Wheat., 213.
Hunt vs. Wickliff, 2 Pet., 201.
Codman vs. Winslow, 10 Mass., 46.
Semple vs. Cook, 50 Cal., 26.
Wilkins vs. Pensacola Co., 37 Fla., 59.

COMPLAINANT'S TITLE MUST BE CLEAR AND SETTLED.

Pages 63 to 67, appellant's brief.

All that is meant by the rule is that the title upon which the action is brought must be a valid title, legal or equitable.

Where there are numerous complainants it does not mean that each of the named complainants must have the particular and exact interest alleged in the bill, nor that each and every one must bear the exact degree of kinship to a common ancestor having a valid legal title to the land.

The complainants or some of them must be the real owners of the land.

In the case at bar appellees hold the legal title under the patent from the United States. The legal title to the land is established by the patent. That the complainants in the bill took and hold title under the patent was established by competent evidence, as has been heretofore in this brief shown. They are the real owners of the land. Either their title is a legal title, good against all the world, or appellant's title is a good title.

The issue is between the parties to this suit with no outstanding estate in any third persons.

The cases cited by appellant, on pages 66 and 67 of the brief of counsel, are not in point on the facts of this case.

As in ejectment plaintiff must succeed on the strength of his own title, but may recover a less estate than sued for, so in a bill to remove cloud, complainants must have a legal or equitable title to the land, but the particular share or interest of some of the several complainants may be other than alleged in the bill.

NO NECESSARY DEFENDANTS HAVE BEEN OMITTED.

Appellant contends the bill omits "proper" parties — pages 81 and 82 of the brief for appellant.

The 36th assignment of error is without merit for the reason that appellees ask no decree against Crumpler, Kryce or the Buffum Land Company. Their tax deeds are not feared. Appellant did not deem them worth acquiring.

Sanford deeded the land to Dawes Thompson and Norris, January 9, 1884. Appellees are not troubled by the tax certificates assigned to Sanford in 1882. Tax certificates do not convey land under the tax laws of Florida.

As stated in this brief, page —, the decree does not undertake to cancel any warranty deeds, therefore Mills, Powell or Sanford were not necessary parties. Their alleged interests, legal or equitable, are not affected by the decree taken, and have passed into appellant if they had any.

West Coast Lumber Company vs. Griffin, 54 Fla., text 625.

PROOF OF PEDIGREE.

The fourth assignment is that the Court erred in finding the eight complainants who proved their pedigree to be descendants and heirs at law of Teresa, the patentee, and entitled to an interest under the patent.

That they are heirs at law of the patentee of the land and of her legal representatives to whom the patent ran is established by legal evidence, and not controverted by any testimony

(pages 119, 131, 132, 133, 136, 196, 216, 234, 821 to 823, 984 to 1024, 1035 to 1037 of the record).

The bill, paragraphs two to ten, alleged these appellees were heirs at law of the patentee and set out their pedigree (pages 3-6 of the record).

The answer neither admitted nor denied the allegations of the bill (page 35 of the record).

On appellees' theory of the case only a preponderance of testimony was required to establish the finding of the decree that Felix Marcos and the others named in the first paragraph of the decree are heirs at law of the patentee of the land.

The only objection to the maintenance of suit by appellees is contained in paragraph three of the answer, and that is confined to the averments of the eleventh paragraph of the bill as to the sources of counsel's information as to the degrees of relationship with the common ancestor and the several shares and interests possessed by each of the several complainants.

Appellant is estopped to contest that appellees named in the bill are the legal representatives of Teresa Rodriguez.

Appellant read in evidence the record in the former case of Felix G. Marcos y Diaz against appellant (pages 1030 to 1034 of the record).

The parties in that cause were set out in the bill of complaint. If they had materially differed from the complainants in this suit, appellant would have been quick to have availed itself of the fact.

That cause is entitled in the name of the Felix Genaro Marcos y Diaz made a party in this case, and who proved his pedigree and was decreed to be an heir of the patentee. See the diagram page — of the brief.

This indirect evidence offered by appellant in the absence of any controverting evidence would sustain the decree, but the direct legal evidence is convincing.

Appellant put in evidence the copy of the proceedings instituted by it in the Circuit Court of Lake County, Florida, in Chancery, wherein appellant sought to perpetuate the testi-

mony of certain witnesses as to the alleged adverse possession had under the tax deed made to Mills in 1872.

In those proceedings appellant represented by one of the counsel in this case set out the names of the persons known to appellant to claim an interest in the lands patented to appellees.

Appellant there names as interested in the grant and resident in the Island of Cuba, thirty-four persons (pages 939 and 940 of the record). The names and addresses were probably obtained from the powers of attorney, etc., on file in the Land Department under which the proceedings for issuance of the patent were had, or from the suit brought by appellees in Lake County in A. D. 1891—the record page 259.

Out of the thirty-three complainants named in the bill, pages 1 and 2 of the record, all were named as defendants in the proceedings **in rei,** pages 939 and 940 of the record, except the following:

Rosa del Pozo y Marcos; Maria Teresa, Gertrudes and Ricardo Garcia y Ochandarena; Roso, Regla and Concepcion Pozo y Fabre.

From these seven persons whom appellant in its proceedings to perpetuate testimony failed to name as interested in the grant confirmed to the legal representatives of Teresa Rodriguez, appellees made strict proof of the pedigree of Ricardo Garcia, the brother of Maria and Gertrudes Garcia, which proof is found on pages 521 to 523 of the record and is established by Exhibits "11, 12, 15, 16 and 17" and is shown in the diagram on page 117 of this brief.

It thus appears that appellant in a proceeding in the Courts has itself named and recognized 26 of the 33 appellees named in the bill as having an interest in the lands patented, and that of the seven complainants not so recognized by appellant the pedigree of one has been traced from Teresa Rodriguez and Miguel Marcos, her husband, by church records duly and regularly proved, which strict proof carries with it presumptive proof as to two others.

Upon this record it does not lie with appellant to contend that appellees are not entitled to maintain their action.

PROOF APPELLEES ARE THE LEGAL REPRESENTATIVES OF TERESA RODRIGUEZ EXISTS IN THE GENERAL LAND OFFICE.

Further since appellant has brought this case into this Court while the case must be heard upon the record, yet the Court may take judicial notice of the records of the Land Department where exist prima facie proof of the family relationship of appellees by many original powers of attorney containing the usual recitations as to kinship with Teresa Rodriguez found in documents of that nature executed in the Latin countries before notarial officers.

The attorneys prosecuting the claim and the Land Department certainly deemed these documents sufficient to establish the pedigree of appellees, and evidently appellant so considered when it brought its proceedings **in rei perpetuam.**

All the powers of attorney taken from the heirs of Teresa Rodriguez to prosecute their claim by Sariol and those used by Shelley and Martin before the Land Department must have been acknowledged before the United States Consul in Cuba or they would not have been recognized by the Land Office, and must be presumed to have contained recitals of the right and interests of the parties appointing such attorneys to prosecute their claim for the lands in controversy.

By the practice of the Land Department authority to prosecute a claim for land must be filed in the Land Office.

The letter from the Commissioner of the General Land Office to Shelley & Martin shows that the heirs of the confirmee were before that department and represented by Mr. J. H. G. Martin (page 849 of record).

Mr. Martin testified that the complainants in this suit employed him to prosecute their claim (page 826 of the record).

The patent was delivered to his firm (page 826 of the record).

Appellees contend, therefore, that from similarity of names with the original grantee from Spain, the delivery to them by the United States of the patent, the prosecution of the former suit a part of the files of which were read in evidence (page 1031 of the record) by Cecil G. Butt, one of the counsel who

prosecuted the claim before the Land Department (pages 845 and 847 of the record), the Court below was legally bound to presume all the complainants had an estate in the lands patented.

The case of Beatty & Ritchie vs. Kurtz, 2 Peters, 566, is in point. There the bill was brought by certain plaintiffs alleging themselves to be trustees of an organized church. The defendants by answer denied the authority of the complainants to act on behalf of the church, and prayed the same benefit as if this defense had been presented by plea.

After stating that if the complainants were the regularly appointed committee they had the right to maintain the suit, the Court, by Mr. Justice Story, adds:

"The only difficulty is whether the plaintiffs have shown in themselves a sufficient authority, since it is not evidenced by any formal vote or writing. If it were necessary to decide the case on this point, we should incline to think that under all the circumstances it might be fairly presumed. But it is not necessary to decide the case on this point, because we think it one of those cases in which certain persons belonging to a voluntary society and having a common interest may sue in behalf of themselves and others having the like interest as part of the same society for purposes common to all and beneficial to all." (Text, page 585.)

In the case at bar the presumption from all the circumstances is that complainants are descendants of Miguel Marcos, the grantee from Spain, and the legal representatives of Teresa Rodriguez, to whom the patent from the United States was issued; but if this presumption is rejected then but slight evidence was required to establish the pedigree of the eight who are found by the decree to be such descendants, and the decree should be affirmed on this point.

If appellees were required to prove their estate and interest in the land, yet, as appellant offered no testimony, prima facie proof only was required.

That this was made there can be no doubt.

EVIDENCE TO PROVE PEDIGREE.

The witness Sariol had formerly been the attorney in fact of the heirs of Teresa Rodriguez to prosecute their claim for the land in suit. He was employed and obtained powers of attorney from a great many of the heirs of Teresa Rodriguez about 1885 and continued to represent them until he gave up the case, because he could not get the Land Department to issue a patent (pages 120 and 152 of the record).

The position occupied by Mr. Sariol required him to ascertain who were the heirs of Teresa Rodriguez, and his interest which was probably a contingent fee made it necessary to establish such heirship by the documentary evidence from church records, recitations in powers of attorney and testimony of living witnesses.

Sariol prepared a table of the descendants of Teresa Rodriguez, which he submitted (page 133 of the record).

The testimony of this witness, found on pages 119 to 154 of the record, satisfies the strictest rules of proof of pedigree and is sufficient to base a decree upon in favor of all the complainants named in the bill.

Russell vs. Schuyler, 22 Wend., text 279-280.

He testified that prior to 1885 he undertook to recover this grant for the heirs of Teresa Rodrgiuez; that he investigated church registers to learn who were the legal representatives (heirs); that from those registers he obtained the names, etc.; that about A. D. 1885 he had interviews with these heirs at family conferences held at the houses of some of them; that he knew many of them and had met many of them and several of them had conferred on him powers of attorney to prosecute their claim; that he struggled with their claim for years before the Land Office, but because that office refused to issue a patent to the grant he gave up. All these transactions are **ante litem motam,** and the declarations were of persons recognized as legitimate descendants of Teresa Rodriguez, many of whom were deceased when the witness testified (pages 120, 121, 123, 124, 132, 146, 152 of the record).

APPELLANT NOT A REPRESENTATIVE OF THE PATENTEE.

The record and decree appealed from establish that the appellant has no title and had no occupancy of a tract of over 5,000 acres of land, the title to which had been released to the legal representatives of Teresa Rodriguez.

The appellant is not a representative of the original grantee either by contract or operation of law. Its defense was that the legal representatives of the grantee had lost their title, that it had acquired a title in hostility to the title conferred by the patent to the legal representatives of Teresa Rodriguez, whoever they might be, and that the legal representatives of the patentee were barred from suit by laches.

It is not denied that appellant was entitled to require proper proof that complainants were entitled to sue, though it had defended the former suit brought by substantially the same parties in A. D. 1902.

The brief of counsel for appellant, page 92, states "certain persons not complainants filed a bill," etc. It may be true that there is not absolute identity of parties, but it is believed that the identity is substantial; if it were not appellant had only to put the bill in evidence to have shown it.

The title of the case establishes that Felix Genaro Marcos y Diaz named in the decree in this cause and by legal evidence proved herein to be a grandson of Theresa Rodriguez, headed this list of complainants in that suit.

Pages 1032-1034 of the record.

APPELLEES CONTEND.

First—Having no estate or interest in the patented grant and the patent having been issued at the suit of the appellees and delivered to them, appellant was not entitled to require strict proof of the deraignment of title into complainants in the bill. The Land Department of the United States had determined the right of complainants in the bill to receive the patent, which in this case conveyed the legal title from the United States, the owner.

Second—That complainants in the bill needed only to make **prima facie** proof of their descent from Teresa Rodriguez, and that by operation of law they were the legal representatives named in the patent which had been delivered to them by the Land Department of the United States as such representatives.

Third—That the proof in the record to establish descent from Teresa Rodriguez is absolute as to the eight appellees named in the decree, and as to all other appellees the proof goes much further than the **prima facie** proof required by the nature of the case and the facts established therein.

Fourth—The proceedings **in rei** brought by appellant estops appellant to deny that the persons therein named have not the relationship set out in the first paragraph of the bill.

FURTHER EVIDENCE TO PROVE PEDIGREE.

Besides the testimony of Sariol, Mr. Martin, of the firm of Shelley & Martin, of Washington, who successfully prosecuted the claim of appellees before the Land Department, testified that his firm took up the claim, being employed by Louis Ley, who held powers of attorney from the heirs of Teresa Rodriguez; that these powers were on file in the Land Office; the letter from the Commissioner recites that Martin's firm have filed proof that they represent the heirs of Teresa Rodriguez and to him the patent is delivered. (Record, page 849.)

The certificates on file in the Land Office at Washington upon which the department acted in adjudging the claim, satisfied the department or it would not have acted on the claim. The department accepted them as **prima facie** proof of the rights of the parties to there prosecute the claim against the United States, the legal owner of the land. (Record, pages 825-833.)

This Court will take judicial notice of the rules of practice in the Land Office, a department of the Government, and of the fact that by the rules of practice in that department claimants must make proper proof of their right to prosecute a claim and receive a patent, especially where as in this claim the patent conveyed the land.

Recitals in deed, the finding of a special verdict between

other parties stating a pedigree, a bill in chancery by an ancestor, though not admissible in other cases, are competent to prove family pedigree.

Mr. Justice Thompson in Jackson vs. Cooley, 3 John, 128 (found in the early edition on page 101).

Appellees made **prima facie** proof of descent from Teresa Rodriguez as shown in the preceding pages of this brief and as recited in the opinion of the Court (pages 93 and 94 of the record).

RECORD PROOF OF PEDIGREE.
CHURCH RECORDS UNDER CANON LAW.

Because of the very great expense and difficulty of obtaining from Cuba copies of the church records so certified as to be admissible in the Court below, appellees employed an agent to compare all the copies offered with the original church register in which it had been transcribed.

Testimony of Eugene Sanchez (pages 489 to 525 of the record).

The strict proof made as to eight of complainants, one or more who trace title and descent from each of the children of Teresa Rodriguez, is attacked because counsel for appellant claim the church records are private records.

Under the laws of Spain, where the church is a State institution, church records are public records, certainly they are quasi-public, and the common law rules do not apply to their character and the effect of the recitals therein.

As stated by Father Foley, the Roman ecclesiastical law requires the keeping of church registers, and makes the parish priest their custodian and authorizes him to furnish copies therefrom (pages 201-202-214 of the record).

Blackstone divides the common law of England into three branches. In the third branch is included the civil and canon laws, which were of force and used in the ecclesiastical courts of England because they have been admitted by immemorial usage there.

1 Blackstone's Commentaries, pages 79 and 80.

As to the effect to be given the recitals of the church records produced from the island of Cuba, also those found in St. Augustine and made during the Spanish occupancy, the canon law must control.

This Court will take judicial notice that the church registers were required to be kept and that the custodians were authorized to furnish certified copies.

Fremont vs. United States, 17 Howard, 542—15 L. Ed., 245.

United States vs. Sarah Turner **et al.,** 11 Howard, 663-668—13 L. Ed., 859.

Sullivan vs. Richardson, 33 Fla., 1.

Farmer vs. Eslava, 11 Ala., 1028.

The civil law in force before the Change of Flags is a domestic law.

United States vs. Perot, 98 U. S., 428—25 L. Ed., 252.

This Court must determine the force and effect of the church registers used in evidence in this case by the laws of Spain, of which it is bound to take judicial notice as domestic laws, and which have also been proved herein as if they were foreign laws. As to the heirship of appellees it is based upon facts which had their origin and partly existed before the cession.

In the act referring Spanish claims to the Court, Congress prescribed as a rule of decision the laws and ordinances of Spain.

In the Arredondo case, Mr. Justice Baldwin says a royal order, an ordinance, a decree of council or an act of an authorized officer if made or promulgated by the King, or by his consent or authority, becomes as to the subject matter to which it relates, a law of the kingdom, in Spain and all its dominions.

He further says: There is another source of law in all governments—usage, or custom. "A general custom is a general law."

United States vs. Arredondo, 6 Peters, text 714-715.

Wigmore in his valuable treatise upon evidence says:

"Every community having rational government should by

means of a system of official, universal, and compulsory registration authorize the preservation of an adequate source of evidence for the purpose of providing the facts necessary to prove pedigree. Such a system has long been familiar in many parts of the European continent and in Asiatic countries."

Wigmore on Evidence, Section 1642.

Summing up the history of the use and effect of such registers this author says:

"On the whole, then, it seems desirable to receive all such registers as evidence (a) first, of the facts required by law to be recorded; and (b) if no law specifically provides for the contents of the register in question, of the fundamental facts customarily entered in such registers directly on the faith of other persons having personal knowledge—namely in birth or baptismal registers, of name, sex, age, parentage and date of birth; in marriage registers of name, age, residence and date of ceremony; and in death or burial registers of name, sex, age, residence and date of death."

Wigmore on Evidence, Section 1646.

In the originals of the examined copies of church registers sent up from the trial Court it will be found that the parentage is set out in marriage and burial certificates, thus proving the custom.

The church records in evidence, the legal effect of which this Court must construe, and the form and the recitals therein which this Court must consider in accordance with the civil law of Spain, begin as early as A. D. 1796. The record pages 1004-1006.

Father O'Reilly recites that he is not only priest but eclesiastical judge of the parish church and province of St. Augustine.

A foreign law is required to be proved only because in the administration of justice it has been found reasonable that there shall be a judicial presumption that the foreign law is that of the locus of the trial, until proof to the contrary is made, when such foreign law must necessarily be proved.

Monroe vs. Douglas, 5 N. Y. 447.

Without depending upon the Court to judicially know the

foreign law in this case appellees made proof of it by the witnesses, Father Foley and Mr. Sariol.

Mr. Sariol was a competent witness to prove the Spanish law. Any intelligent person of the country is sufficient.

Kenny vs. Clarkson, 1 John 386, text 394.
Chanoine vs. Fowler, 3 Wendell 170, text 177.
American Life, etc., Co. vs. Rosenagle, 77 Pa. 515.
Goods of Kahn, L. R. 6, P. D. 6.

A priest may testify to a foreign marriage law.

Birds Case, 21 Grat, 801.

. The Court in its opinion did not hold that the copies from the church records alone established appellees' title, but that upon all the evidence a prima facie case had been made.

The proof made of the pedigree of the three children of Teresa Rodriguez from the church registers at St. Augustine is found on pages 207 to 211 of the record; Exhibits 13 and 14 on page 1009 of the record; Exhibits 15 and 16, pages 1014 to 1016 of the record; Exhibits 17 and 18, pages 1020 to 1022 of the record.

As to the descendants of these three children of Marcos, since the proof of their pedigree must be made from the church records kept under the laws of Spain, of which the canon law is a part, the rule announced in the cases decided by the English and American cases limiting the effect of copies of parish registers to the fact of marriage, baptism or burial has no place in this cause.

Where the church has been wholly divorced from the state, where every village contains a separate and different parish for every few hundred residents wholly independent of the municipal law, and where as in the Southern States of this Union the more ignorant classes in the community have their own parishes, the rule is reasonable and proper. These parish registers very properly are evidence of only the facts required to be recorded therein.

In countries like Spain and Italy the parish priest is a quasi public officer and the keeping of church registers is regulated by law. That law will be determined by the Court inquiring into the official customs and usages.

Fremont vs. United States, 17 Howard, 542, text 557

RECITALS NOT INCOMPETENT TO PROVE PEDIGREE.

Counsel in the Court below laid great stress upon the case of Blackburn vs. Crawford's Lessee, 3 Wall., 175.

The statement of that case is George Crawford and sisters claimed title to land as the children of Thomas Crawford last seized; they were admitted to be children of Thomas, but it was claimed Thomas was never married. Remoter collateral heirs claimed George and his sisters were bastards.

Apart from the effect to be given church registers kept under the laws of Spain, can it be said that case is authority here where the defendant has no estate whatever in the lands the subject matter of the suit?

In that case the issue on which depended the transmutation of title to land by operation of the existing law of descent was whether or not there had been a marriage celebrated at St. Patrick's church, Washington, in July, August or September of the year 1835, between a witness and the intestate owner of the land, and to prove this a baptismal certificate of a child recited to be the child of that marriage was offered, the recitation being the fact to be proved.

Of course, no **prima facie** proof of this fact could stand against the positive testimony contained in the intestate's will that his children were illegitimate. The Court says, "It should not have been received to prove the fact recited in the certificate **without other proof.**"

In the case at bar there is other proof in plenty.

The case is instructive upon a point of pleading in this case and that is as to necessary parties.

In that case the Court, in holding that a former judgment was an estoppel as to one of the parties plaintiff, say that rejection of this judgment was harmless error; a verdict in favor of one or all was alike fatal to his claim to the property in controversy. So here one alone of appellees may be granted the relief prayed, and certainly can the appellee, Felix, that Sariol testified was known to him to be one of the descendants of Ter-

esa, and so reputed to be by other deceased members of the family as they told him.

As to the required evidence to prove pedigree:

The case of Fulkerson vs. Holmes, 117 U. S., 389, text 397, is in point. In that case a deed sixty years old was held to be properly admitted as evidence of its recital that the grantor was the only child and heir of the patentee, then dead, of the land conveyed.

The Court says the similarity of names in the deed is entitled to weight; another fact held entitled to weight was that the patent was found with the later deed, which two facts are designated as persuasive proof. See the case and cases cited page 389 of text.

In the case at bar Mr. Martin testifies that he acted for the parties plaintiff and that the patent for their claim was delivered to him and he held it at the date of his deposition (page 826 of the record).

Certainly this was **prima facie** proof of the right of these parties to take under the patent and to have relief against a void paper title presented to refute the title conveyed by the patent.

Another circumstance deemed of weight in the case in 117 U. S. is that no other parties had challenged the right of the grantees in the deed.

In the case at bar appellant recognized the clients of Mr. Martin as owners of the land and but for the war with Spain Mr. Wilson might have bought the land from them instead of venturing to speculate on a hostile title.

See letters of Mr. Wilson, the Exhibits attached to Mr. Martin's testimony (pages 833 and 834 of the record).

RECITALS IN RECORDS.

It must be remembered that in the case at bar we have proved by examined copies the contents of ancient church registers which we first proved to be in the proper custody and kept by a law prevailing in the country where the books were. (Record, pages 488 **et seq.**)

As to recitals see the law as pronounced by the trial Court in Carver vs. Jackson, 4 Peters, text, page 30, and in the opinion, page 84.

In ancient transactions recitals are of weight. In the proof of ancient transactions the Court says the rules of evidence must be relaxed in some measure.

For the purpose of raising a presumption or proving a pedigree by the recitals contained in an ancient instrument I think the probate of the will before the proper officer * * * or the record thereof * * * must be of as much if not more force than the production of the ancient will itself.

Russell vs. Schuyler, 2 Wend. 277-279.

Roscoe's Nisi Prius Evidence, an English authority, discussing the law in that country, says an old pedigree compiled from registers, wills, monumental inscriptions, family history, etc., is not evidence **except** so far as it relates to persons presumably known to the party signing it, or respecting whom the party signing it may have obtained information from other members of the family.

Now this exception covers the recitations in the church registers kept in Cuba.

The combined registers of each parish covering long periods of time with their recitations of facts known to the resident priests signing them, make **prima facie** proof of descent from Teresa down to complainants.

The text-books and cases are as cited by defendants' counsel, but all are dealing with records usually kept in England and America and are cited in cases where, as in 3 Wallace, 175, the issue is made between conflicting claims to property, disputing the right of certain parties to have their own title protected from a paper title apparently good but without any validity in law, and not as in this case by a party having no estate or interest in the subject matter of the issue.

They are not authority in this case, any more than the cases cited to prove laches are applicable to the facts of this case.

CHURCH REGISTERS.

The law applicable to the recitations in church registers is the civil law, the proof of which was made by Father Foley.

In the civil law it is customary to write down in public registers marriages, christenings and other acts which ought to be recorded, which are kept as a public and perpetual repository of the truth of the acts which are recorded. From the inconvenience found in receiving writings not authenticated as they were received by the Roman law, the ordinances of France and Spain were enacted that there should be kept public registers of christenings, marriages, deaths, burials, admissions into any religious order, etc., to the end that people may easily come at the certain proof of these sorts of fact.

> 1 Domat Civil Law, pages 709-800, Ed. 1850, Little and Brown; Title: Proof by Writings, Citing the Ordinances of France.

Mr. Greenleaf states that the reason entries in parish registers are no proof of the identity of parties there named with the parties in controversy, and that the fact of identity must be established by other evidence, is because the fact of marriage or burial or baptism is the only fact necessarily within the knowledge of the person making the entry.

This may be admitted as to parish registers in England and America, but certainly is not true as to such registers in Latin countries where the keeping of parish registers is regulated by the law and such registers are quasi public records.

The Latin countries have adopted in their practice of keeping church records a very admirable system in which the family history is interlaced with the personal record of the person upon whom the sacrament is administered, which recites the ancestry on each side in records of marriages, and both the paternal and maternal ancestry in certificates of other kinds. In this manner these church records create a personal history of the citizen which is authentic and necessarily valuable and differs entirely from the records in English countries upon which the rules in the text-books are based. Each Spanish citizen is entitled to have his **cedula,** which he carries continually with him, and the French **etat civil** is well known. By their construction and

scope these records in Latin countries are made the customary and best evidence of pedigree and are removed from the criticism of text writers on English and American law, especially their permanent ecclesiastical records, such as have been used in this case.

A GENERAL CUSTOM IS A GENERAL LAW.

The Court not only may but are bound to notice and respect general customs and usages as the law of the land equally with the written law and when clearly proved they will control the general law.

United States vs. Arredondo, 6 Peters 715.

The civil law, as the common law, was divided into the written and unwritten law. The unwritten or customary law is that which embraces the usages and customs which have continued so long as to acquire the force of laws.

In the case at bar the copies from the church registers, found on pages 985 to 1025 of the record, cover a period from the year 1796 page 1006, to the year 1886 page 1014 of the record. These copies uniformly recite the pedigree of the person registered, often the grandparents', and sometimes recite the names and number of the legitimate children.

Certainly here is proof of usage and custom which from its long continuance must be presumed to be law.

It is contrary to reason and common sense to apply to such records kept under the law then in force the rule applied in the cases and text-books cited on pages 71 and 72 of appellant's brief.

But in this case if the ears of the Court were closed to the voice of reason yet the rule as contended for by appellant can not be applied to the church registers in evidence because those church records which establish the pedigree of Miguel Josef Marcos, the father of Felix Genaro Marcos, one of the appellees; of Dorotea Marcos, the grandmother of Ernesto Nunez del Pozo, also one of the appellees; of Maria Gracia (also called Altagracia) Marcos, grandmother of Lorenzo, Louis, Ricardo, Gertrudes and Maria Teresa Garcia, all

appellees, were all made under the Spanish law in force in Florida prior to the change of flags.

See pages 1004-1005, 1009-1010, 1014 to 1016 and 1020-1021 of the record.

After the Court has been advised of what the law is which it must apply to the records in evidence made prior to A. D. 1823, it can not properly refuse to consider the same law in considering the church records from Cuba made under the same Spanish laws upon the ground that the foreign law was not sufficiently proved.

The foreign law being judicially noticed to apply to the copies from the church registers made in St. Augustine before the change of flags is in evidence for all purposes and to be considered in determining the force and effect of all the church registers kept under authority of the same law. The law was not a foreign law prior to 1823. When it became a foreign law it did not differ from the same law when a domestic law.

Apply the ecclesiastical law as proved by Father Foley and we have made strict proof of the pedigree of one or more members of each of the three branches of Teresa Rodriguez' descendants.

Apply the common law and we have made **prima facie** proof of all appellant has a right to have. Appellant can, at most, only require that appellees make proof that they are not mere pretenders, and produce some evidence that they are the legal representatives of the patentee. There being an absence of any evidence to the contrary, and appellant having negotiated with them and recited them as such, on the record (pages 833 and 834) it is not entitled to even this proof.

In the case of Caujolle vs. Ferrie, 23 N. Y., 90, where the issue was legitimacy, great weight was given the recitations of a church register of baptism. In the opinion it is said:

"When, therefore, in the solemn act of baptism the respondent is described as the son of Balentin Ferrie and Jeanne I. Card, we are justified in holding that his legitimacy is established, **prima facie,**" page 105, while the dissenting opinion of Mr. Justice Denio is chiefly based upon the omission of the baptismal register to recite that the respondent was the legiti-

mate son of the parents named, there being proof that it was the custom in France for the priest to describe on the register of baptism the condition as legitimate or illegitimate according to the fact as to those upon whom the sacrament was administered, and he adds:

"In a research of this character (legitimacy) contemporaneous written documents afford a degree of satisfaction beyond any other species of evidence, and accordingly the parties have with great propriety introduced the record of baptism of the respondent from the baptismal record of the parish church of St. Girons, signed by the cure" (text, page 117).

On pages 120 and 121 the same Justice considered the presumption arising from the name recited in the register of the godfather of the infant baptised to establish legitimacy of the child upon whom the sacrament of baptism was administered.

In Jackson vs. Cooley, 8 John, 128 (edition 1820, page 101), the Court says:

"A regular title from the government having been shown in their ancestor, the only question upon the trial was whether the evidence warranted the jury in finding the lessors were the heirs of Wilson and Goodrich. * * * Ludlow testified he was well acquainted with William Wilson * * * ; that he removed to England * * * ; that he died * * * ; that John Wilson was his only nephew and heir at law; that after the death of William Wilson he acted as agent of John Wilson by virtue of a power of attorney from him * * * wherein he is styled the heir at law of William Wilson; that he has corresponded with John Wilson, and has always understood from the acquaintance of the family and the people who claimed an interest in these lands near the patent to Ross, that John Wilson was both devisee and heir at law to William Wilson who claimed one moiety of the land patented to Ross * * *. In addition to which a deed from them to Ezra Coats, another lessor, was produced wherein they are described as such heirs. This deed was duly acknowledged. * * *

"This testimony was sufficient, **prima facie**, to be submitted to the jury. Had there been any evidence on the part of the

defendant casting any doubt or suspicion on the subject the sufficiency of the evidence might be somewhat questionable."

In this case the acknowledged deed reciting themselves as heirs of the patentee was held to be a circumstance of weight in evidence of the pedigree of the grantors therein.

The case of Jackson vs. King, 5 Cowan, 237, holds:

(1.) Hearsay in the family and among relations, traditions, and anything which shows a general reputation is admissible to establish pedigree.

(2.) Producing letters patent to one, and then tracing descent from one of the same name are **prima facie** evidence that the patentee and the ancestor are the same person.

(3.) Producing a contract bearing the same name with the party in the suit is **prima facie** sufficient and throws it upon the other party to produce evidence against the identity.

In this case the copy of the record of the Dutch church in the city of New York was given in evidence to prove pedigree by which it appeared that on the 26th of May, 1695, one William Appel and his wife had a son baptized by the name of Simon; that Simon Appel had a daughter Magdalena, baptized in 1719, and a daughter Gertruig, baptized in 1721 (text, page 238).

Mr. Justice Woodworth says on page 241:

"The next question is whether the evidence of pedigree derived from the records of baptisms was sufficient? They prove that William Appel had a son named Simon; that one Simon Appel had a daughter Magdalena, baptized in 1719, and another daughter Gertruig, baptized in 1721. That Simon Appel, mentioned in the extract of baptism in 1719, was the son of William, is, I think, to be presumed. The presumption is considerably fortified by the fact that William appears to have been one of the sponsors. But it may be asked, what is the use of allowing the registers of births, marriages and baptisms? If A. claims that B. is his ancestor, as grandfather; that such ancestor has been dead a century, and his son C. half a century, it can not be expected that living witnesses can be produced to prove the relationship of past generations. He may, then, resort to the register. What fact does that establish? It may appear that B. was married; that he had a son C. afterwards baptized; that

C. afterwards had a son A. baptized; on the face of the register, it does not appear that A. was the son of C. or that C. was the son of B.; but it is the best evidence the nature of the case admits; and, because greater evils are apprehended from the rejection of such evidence than its admission, the law has relaxed the general rules and allowed the exception. But after all, the evidence would be unavailing, unless the law presumed that the persons named in the register were the ancestors of the claimant, they all bearing the same names, and no evidence being adduced that there had ever been other persons of that name."

These cases establish that while church registsrs in England and America are only evidence of the celebration of the marriage, baptism or burial, yet by the presumption which arises from identity of names in the register, relationship is established, there being no evidence to the contrary.

Appellees proved their pedigree both by testimony of witnesses and by church registers kept according to the law of Spain and the custom of the Latin nations, so that they are not dependent upon the presumption of identity of names in the several certificates, but nevertheless such identity appears coming down from the original grantee and his wife to appellees.

In addition to the cases we have cited where the Courts in this country have considered the recitations in parish registers we cite two more cases.

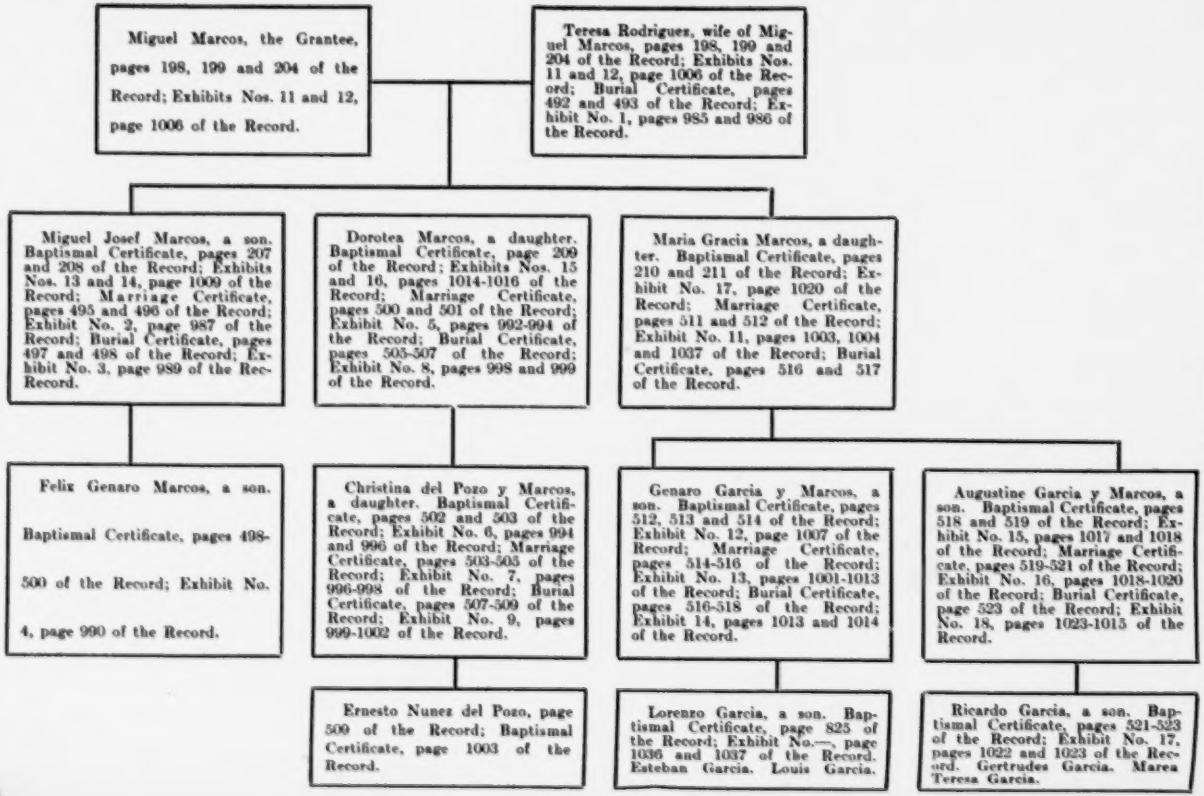
In Louisiana it was held that entries in a church register kept in Germany were competent to show the needful facts to prove that at the death of a party he left no minor heirs, such church register being kept in conformity with the rules of the registering church.

Succession of Justus, 48 La. An. 1096—20 So. Rep. 680.

In Connecticut it was held that a city registrar's record of marriages and births is admissible to show the age of wife and the mother, these facts being a required part of the registrar's duty to record.

Murray vs. Supreme Lodge, 74 Conn. 715; 52 Atl. Rep. 722.

THE TABLE OF DESCENT OF THE EIGHT COMPLAINANTS NAMED IN THE DECREE.



ONLY PRIMA FACIE PROOF REQUIRED.

This long argument has been required because appellant contends that the complainants in the bill should have made strict proof of title from Miguel Marcos, to whom appellant claims the land was granted in fee.

Appellees contend and have established that the title to the lands in controversy remained in the United States until A. D. 1895 and passed directly to the complainants in the bill by the patent from the United States.

If this appears, then all appellees were required to prove in this suit is that they were recognized by the Land Department of the United States as having established their descent from Marcos and wife by such evidence as entitled them to receive the patent issued to the legal representatives of Teresa Rodriguez.

In other words, if the title from the United States passed in 1895 to the legal representatives of Teresa Rodriguez, then proof that the complainants in the bill represented themselves to be such legal representatives and were so recognized by the Land Department of the United States is **prima facie** proof of their right to assert the title vested in them by the patent to them delivered.

The deposition of Mr. Martin, the letters to Shelley & Martin and the former suit instituted by the same complainants are proof that appellees are the same parties who prosecuted the Rodriguez claim before the Land Department as the legal representatives of Teresa Rodriguez, and to whom the patent issued.

We do not deny that the question who are the legal representatives of Teresa Rodriguez under the patent is open to inquiry, but we contend that the proof required is not strict proof of descent from the original grantee from Spain, but **prima facie** proof that complainants in the bill take the title which passed by the patent from the United States in 1895.

In Hogan vs. Page, 2 Wall., 605, the question before the Court was whether the confirmation enured to a person who established that he was a representative of the original grantee without producing any documentary evidence of his being an

assignee of the person for whose benefit the confirmation enured.

This Court held that any evidence which tended to prove there had been an assignment of his interest in the land by the confirmee should be received, especially as in the days when the transaction occurred parole transfers of an interest in land were deemed effectual at the locality where the land was.

The principle of this case is controlling in the case at bar.

The 4th, 30th and 31st assignments of errors are without merit for the foregoing reasons.

FURTHER PROOF OF PEDIGREE MAY BE MADE.

If for any reason this Court shall hold there is error in the finding of the Court below that **prima facie** proof of descent and title was made, yet this Court should not even then reverse the cause, but should allow appellees to make further proof to establish their descent.

Gresley Eq. Ev., page 132.

Drummond's Adm. vs. Magruder, 9 Cranch, 122.

Lawrence vs. Sharpe, 1 Molloy 252—12 Eng. Chan. Cases, 124.

Hutchins vs. Gerrish, 52 N. H., 205—13 Amer. Rep., 19-22.

The case last cited was an action at law in which was introduced as evidence a copy of the record of the Court of another State. It appearing that the record was not properly authenticated, the Court held this defect in proof did not necessitate setting aside the verdict, but the record might be properly authenticated and the evidence made fully competent as it was evidence addressed to the Court.

The principle of the case covers this case and is of more weight since it was decided in a court of law whose powers are limited.

The cases cited on pages 71 and 72 of the brief for appellant are not applicable to the law and facts in the case at bar.

As stated in the bill, page 6 of the record, counsel for appellees were not entirely certain as to the several interests

of complainants, and were obliged to depend largely upon documents in the Spanish language in preparing the very full statement of pedigree found in the bill.

If it shall appear that by reason of the inherent difficulties, counsel have not made prima facie proof of pedigree of all the complainants named in the bill; this Court should direct the Court below to receive further proof, the equities being found to be with appellees, although this would entail a large expense. As appellees may enjoy or even sell their lands without further evidence of their estate than has been made before the land department and in this suit, and appellant has no concern in the matter whatever, we fail to see how the 4-5-30 and 31 assignment of error can be sustained on this record.

The record fully sustains the finding of the Chancellor that appellees named in the decree are descendants and heirs of Teresa Rodriguez and such finding is sustained by legal evidence, but if there were doubt upon that point it would not justify this Court in reversing the decree.

The Chancellor is not confined as a jury is to legal evidence because he will apportion its due effect and no more to such evidence and therefore evidence that is not legal evidence may be used by him to inform his mind, though perhaps not absolutely to govern his decree.

Kilbee vs. Sneyd, 2 Molloy 186, 12 Cond. Eng. Chan. 410. 410.

Appellant's counsel are in error in stating, on page 76 of their brief, that Mr. Sariol "only personally had more than a casual acquaintance with two of those who claimed" the grant in 1885. His testimony is that after the family conference held at the house of Jose Quentin del Pozo the "mentor" of the heirs of Teresa Rodriguez, he transacted the business relating to the prosecution of their claim with Jose Quentin del Pozo and Enrique del Pozo. Among those at that conference are several of the complainants in this suit. Pages 146-147 of the record.

The statement found, on page 75 of appellant's brief, that Mr. Sariol "never knew any of the present complainants personally" is also not correct.

His testimony, on page 149 of the record, is that he had no

personal acquaintance prior to March, 1907, with the named persons he then met. He had no personal acqauintance with them prior to March, 1907. Page 149 of the record.

APPELLANT HAS NO CONCERN WITH THE ESTABLISHMENT OF THE SEVERAL SHARES OF APPELLEES IN THE LANDS.

On pages 67 and 77 and again page 79 of the brief for appellant on the merits counsel insist that this suit should settle that complainants are the only heirs, and also who are all the heirs of Teresa Rodriguez.

Appellant has no concern in this suit with the settlement of such questions. It is entitled to proof that the parties suing or some of them are the heirs or legal representatives of the patentee, but the extent of the several interests held by the several parties is of no concern to appellant.

"If Thomas had no title to the lands what consequence was it to him that the conveyance was decreed to be made to all the complainants as being the heirs of Harvie rather than to two of them?"

Thomas vs. Harvie, 10 Wheaton, 146-152.

Counsel, on page 75 of their brief on the merits, refer to the failure of any of the complainants to testify in this suit.

The primary reason for this failure to call some of complainants was the attendant expense. A further reason was that there are three branches of the family of Teresa Rodriguez. It was found that Felix Genaro Marco could testify as to his father and his two sisters, but his testimony as to his knowledge of the descendants of his two aunts would probably have broken down under cross examination if sufficient on examination. Ernesto Nunez del Pozo could have testified as to his grandmother Dorotea Marcos, but his evidence as to the third branch of the family would not have been competent after objection.

Counsel became satisfied that oral testimony would not make the proof required and to make oral proof of a part would be a useless expense.

As heretofore stated counsel were compelled by the attend-

ant expense to confine the strict proof to a few of the complainants, being satisfied this was proper, and made sufficient proof.

Having been forced to so confine the proof counsel determined to produce the highest and best evidence and were furnished by the proved custodians of the church registers copies of marriages, burials and baptisms to establish pedigree of one or more of the living heirs of each of the three children of the patentee.

It being practically impossible to take the depositions of the several priests in charge of the Cuban records as was done for the St. Augustine church records, counsel sent all the copies which had been furnished them to Mr. Sanchez, a resident of Havana, with directions to prove the original record and then make proof of each by comparison of the copy with the original record from which taken. Mr. Sanchez is the Havana manager for the information bureau of Foster & Reynolds, and familiar with the Spanish language and custom.

How well he did his work appears by the record.

The expense was large but it was only a fraction of what it would have cost to bring the parties to Florida to give oral testimony and it made evidence of a higher character, than oral proof.

Here it is proper to notice that part of appellants' brief wherein it takes exception to the failure of appellees to make claim for their lands until Mr. Sariol "commenced the agitation of this claim" in 1885. Appellant has no ground to complain if the heirs of Teresa Rodriguez did in fact abandon their claim between 1831 and 1885.

If Mr. Sariol or some other attorney or agent had not taken up the prosectuion of their claim, the lands would have remained as they were, public lands of the United States, subject to entry as such.

The Furman claim was on all fours with the Rodriguez claim. In that case the United States patented the lands in 1895, having in 1886 allowed swamp selections to a part of the land claimed to have been granted to Jessie Fish under Spain.

If the heirs of Teresa Rodriguez had remained quiescent

appellants would have had to deal with a patent from the United States for the lands as public lands as is shown by the letter from the Commissioner of the General Land Office, pages 845-846 of the record.

On the authority of the Furman case such patent would have conveyed the legal title.

Mitchell vs. Furman, 180 U. S., 402.

APPELLEES WERE NOT ESTOPPED NOR THEIR EQUITIES LOST BY LACHES.

Until 1895, when the patent was issued, appellees were prevented by the government's acts from attacking the claim of the tax-sale purchasers to the land to which they claimed a right.

After the patent issued they had no need to attack the void deeds made by the parties holding under the original tax deed, as there was no occupancy of any part of the land thereunder.

Appellees have established by competent evidence that on the issuance of the patent their attorney and agent, Mr. J. H. G. Martin, came to Florida and took actual possession of their lands which he found to be vacant, unoccupied, wild lands.

From that date seizin followed the legal title and there being no occupant of the lands, the appellees were in possession, and they have remained in possession to this day.

The deed from the Colonization Company, a British company, to the defendant is dated May 3d and recorded May 14, 1900. At its date the lands patented were wholly unoccupied (pages 830, 827, 544, 545, 551 of the record).

Until May 14, 1900, when defendant recorded its deed, no hostile title was asserted and no occupancy was sought to be had.

"If the Statute of Limitations is a defense to such an action as this (bill to quiet title), the Statute did not begin to run until the filing of the quitclaim deed."

Pleasants vs. Blodgett, 2 Am. State Rep., 624, text 626.

The records of the District Court, which that Court judicially noticed at the hearing and part of which is printed on pages

1031 to 1034 of the record, show that appellees instituted suit therein upon their title derived by and under the patent to set aside this deed in June, 1902, about two years only after an action of any nature whatever could be brought against appellant. Their suit was to remove the cloud on their title by defendants' recorded deed, and there being no occupant of the lands, they had no need to bring any action.

The record shows that this suit was dismissed without prejudice, the cause of dismissal being a failure to prosecute (page 1033 of the record). Counsel now know and this Court will recognize the great difficulty and expense of prosecuting such an action, appellees being very numerous, in a foreign country, speaking only a foreign tongue, and their principal counsel being residents of Washington, D. C.

In that case as well as in this strict proof that appellees were the descendants of the grantee under Spain was probably required by the answer, put in by appellant who had but lately been seeking to acquire from appellees their title to the land (page 834 of the record).

It is probable that the resident counsel in the first case were wholly unable to make the proof required within the time allowed by the rules of practice and submitted to a decree without prejudice against their clients having failed to so draw their bill that a part might prosecute for all. In the case at bar the attendant expense of proving pedigree was a large sum and to have proved pedigree of all the appellees by documentary evidence would have required a very large sum of money. The minimum of charges would have taken several thousand dollars. It was not until the testimony of Mr. Sariol was taken that counsel in this cause determined upon the course pursued of proving pedigree into one or more of each branch of the descendants from Teresa Rodriguez.

Probably counsel in the former case failed to realize this as the proper practice.

If there has been any laches since the patent issued it was that of counsel and not of appellees.

The Court will not allow the laches of the solicitor to be converted into an instrument for the destruction of a just claim.

Schermerhorn vs. L'Espennassee, 2 Dal., 360.
Beecher vs. Shirley, 8 Coke 58.

As was said by the Court in Waterson vs. Seat, 10 Fla., text 331:

"The Court ought to be well satisfied before it closes its doors on account of the negligence of the attorney, that such negligence really exists to so culpable a degree as to enable the client to maintain an action against his attorney, else he will be without remedy."

The question of laches does not depend upon the fact that a certain definite time has elapsed since the cause of action accrued, but whether under all the circumstances of the particular case, plaintiff is chargeable with a want of due diligence in failing to institute proceedings.

Townsend vs. Vandermerker, 160 U. S., 171, text page 186.

They (cases in which laches is invoked) proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned, and that because of the change in condition or relations during the period of delay, it would be an injustice to the party setting up the defense to permit the claimant to now assert them.

Galliger vs. Caldwell, 145 U. S., 368—26 L. Ed., 740.

They all proceed upon the theory that laches is not like limitation, a mere matter of time, but principally a question of inequity in permitting the claim to be enforced—an inequity founded upon some change in the condition of relations of the property or the parties. (Ib.)

Laches is not mere delay, but delay which works disadvantage to another.

18 Am. & Eng. Enc. Law, p. 101, note 5, page 111.

In equity where delay is set up as a defense its validity is to be determined upon equitable principles. Two circumstances always to be considered are the length of the delay and the nature of the acts done during the interval which may effect

either party. Length of time alone is not a test of staleness, or subject to an arbitrary rule—the lapse of the time must be so great and the relations of the defendant to the rights such that it would be inequitable to permit the palintiff to assert them.

The defense of laches is more a question of inequity than of lapse of time.

Hubard vs. Manhattan Trust Co., 87 Fed. 59.
Halstead vs. Grinnen, 152 U. S. Text 417.

Held in a State where the statute of limitations is made applicable to suits in equity that whenever such manifest inequity does not appear a case does not fall within the operation of the rule, if the suit is for the recovery of property, real or personal, unless it is apparent upon the face of the bill that for the period prescribed as a bar to the corresponding legal remedies, there has been a possession hostile to the title the complainant asserts.

Shorter vs. Smith, 56 Ala., 208, cited in Waller vs. Nelson, 106 Ala., 535.

In causes where that Court has exclusive jurisdiction so that the statute does not apply a Court of Equity denies relief only where there is shown to be unreasonable delay, and long unexplained acquiescence by the claimant.

DOCTRINES OF LACHES NOT APPLICABLE.

In determining whether there has been due diligence in prosecuting an action we must first determine whether the party suing was required to sue at all. Certainly in the case at bar there has been no long unexplained acquiscence whatever in appellant's claim of title, it having been attacked before this suit and within two years from its inception.

We contend the doctrine of laches has no application to this suit. (1) Because appellees never had an obligation to sue at all; (2) because there has been no changed condition; (3) because appellant bought a tax title with full knowledge of appellees' legal title; (4) because appellees brought their action within two years after appellant took its alleged title, and have

prosecuted it with a diligence which under the circumstances must be deemed reasonable.

Appellees' land was wild and unoccupied; they had both title and possession and appellant's claims were in legal effect mere **brutum fulmen.**

Constructive possession is sufficient to meet the defense of laches. Van Hook vs. Frey, 13 App. Cases (D. C.) 543.

The owner of the legal title in possession may lie by until his possession is invaded or his title is attacked before he is required to take steps to vindicate his rights.

Reorganized Church vs. Church of Christ, 60 Fed., 956.
Orthwein vs. Thomas, 11 Am. State Reports, 159, text 169.
Simons Creek Coal Co. vs. Doran, 142 U. S., 417, text 449.
Southern Pacific Railway Co. vs. Stanley, 49 Fed., 263.
18 Eng. & Am. Enc. Law, p. 125 and cases cited.

WHEN DELAY NOT A BAR.

Upon the defense of laches two principles control. (1) The defense will not be considered by a Court of equity if the action is to enforce an equitable right in land and is brought within the time allowed by statute for enforcing a legal right in a Court of law. (2) The defense is not available where the party seeking to set it up has purchased a doubtful title with full knowledge of the facts and the claim of the party against whom the defense is set up.

Cook vs. Arnham, 3 P. Williams, 287.
18 Am. & Eng. Law, p. 101, note 5, page 111.

Lapse of time in equity is permitted to defeat an acknowledge right only on the ground of raising a presumption that the right has been abandoned, and this presumption will never prevail against opposing facts and circumstances outweighing it.

Wood on Lim., p. 125, sec. 60, chap. 6.

Since A. D. 1900 conditions of the property or the parties have not changed. The evidence that the tract is an unbroken

forest is conclusive and not disputed. In all the cases where Courts of equity have refused to act because of delay in analogy to the limitation imposed by the statute in cases of law, it has been where the changed conditions of the property or parties rendered it inequitable for the complaining party to assert his legal title after a long lapse of time.

Here the whole 5,000 acres is and has continued to be unenclosed and unimproved, the greater part being a swamp practically impossable.

Mr. Freeman says in his note on page 78, Vol. 13, American State Report:

"No presumption can justly be indulged from failure to bring an action to remove a cloud on title, because a cloud is not a title and may continue to the end of the world without becoming anything substantial."

In the case above cited in 142 U. S., 417, Mr. Chief Justice Fuller says of a tract of 1,200 acres of woodland:

"As Witten was in possession, mere delay, unless by reason thereof an equitable estoppel was created in favor of the appellant, would not operate to defeat relief" (page 449).

It is recognized as one of the grounds on which a Court of Equity entertains suits to remove cloud on title that by lapse of time the holder of a valid title may be unable to establish it. If the very lapse of time which gives occasion for the Court to interfere may be used to prevent its action, without any proof that the lapse has been a detriment, this ground of relief is done away with.

Lapse of time forms no bar to a bill to quiet title brought by one having legal possession.

Dees vs. Smith, 55 Fla., text 656, where, as here, the lands were wild and unoccupied.

Sharon vs. Tucker, 144 U. S., 533, where suit was brought in 1890 upon a title acquired in 1840.

STATUTES OF LIMITATIONS NOT APPLICABLE.

Appellant never having been in possession of the land upon the facts, or upon the law under its own claim as to the facts, the Statute of Limitations is no bar to this action. The

statute is only intended to bar those who being entitled to bring actions neglect to bring them. It applies to those cases where a right of entry only exists in the party claiming the estate and not where he has the seizin. When the patent issued, complainants by their agent took actual possession of their land, no suit to set aside the deeds under which the Colonization Company claimed title was required, if one could have been maintained before the enactment of Chapter 4739, Acts 1899, Section 1950, General Statutes of Florida.

"If time is set up as a conclusive bar by analogy to the statute, the Court only treats it as such when there is an adverse possession." Varick vs. Edwards, 1 Hoff., Ch. 382, citing Barbour vs. Whitlock, 4 Mon., 197, where it is said: "What statute of limitations, or rule of limitation in equity, every ran against the possessor, and in favor of him against whom the possession has been holden."

So long as the cabin stood on lands not within the grant, those taking under the patent were not entitled to bring any possessory action against appellant, whose claim began in A. D. 1900. Even if the location of the cabin on 5,000 acres of wild land excludes the seizin of the holder of the legal title, which we deny, and have cited authority to sutsain our contention, and it is proved the cabin stood on the grant, a suit was not required until the construction of the cabin in 1904 to 1906. See page 373 of the record.

As no action at law could ever have been or can be brought, any cause of action in appellees and against appellant is and always has been a matter purely of equitable cognizance, hence the statute of limitations does not apply.

Atty. General vs. Purmont, 5 Paige Chan. 620, text 632.
Wood on Limitations, pages 118 to 121.

Wood in this treatise on limitations says the argument that the legislature intended by the limitation acts to bind courts of equity as well as courts of law is fallacious "as these statutes are to be construed strictly, being in derogation of vested rights and are not to be extended by implication to cases or causes of action not fairly embraced within the terms of the language employed." **Ib.**, Sec. 59.

The ends of justice must control a court of equity as to whether it will deny relief in analogy to the statute of limitations. **Ib.,** page 120.

As a Court of equity has no legislative authority, it cannot define the time of bar by a positive rule.

Smith vs. Clay, Ambl. 645—3 Bro. ch. cases, 639 note.

Courts have adopted the principle that the delay which will defeat a recovery must depend upon the particular circumstances of each case.

Harwood vs. Cincinnati, etc., Ry. Co., 17 Wall., 78-81 (21-559).

"It is an acknowledged branch of equity jurisdiction to remove clouds from the title at the suit of the owner of the fee. Such owner has the right to invoke its aid. But must he do so within ten years after the commencement of the cloud, or may he do it at any time during its existence while he continues such owner? My conclusion is that this is a continuing right that may be asserted at any time during the existence of the cloud; never barred by the Statute of Limitations while the cloud continues to exist. This results from the continuing character of the right, which is equally as potent after the lapse of eleven years as it was during the first ten. It is a right inherent in the owner of the fee to have clouds removed, and apparent but not real encumbrances discharged of record at all times."

Grover, J., in Miner vs. Beekman, 50 N. Y., 337, text page 343.

In that case it was decided that such action is not for the recovery of real property and unaffected by the New York Statute of Limitation applicable to such actions, because that statute was intended to include only such cases as prior to the code were actions at law for the recovery of real property triable by a jury (text page 341).

A bill to remove cloud is analogous to a suit to abate a continuing nuisance. **(Ib.)**

See cases cited 18 Eng. & Amer. Enc. Law, page 125, among others:

Thompson vs. Dumas, 85 Fed., 517; Cook vs. Lasher, 73 Fed., 701.

Patrick vs. Irenhart, 20 Fed., 339.

Coryell vs. Klehm, 157, Ill., 462; Sanborn vs. Eads., 38 Minn., 211.

Reardon vs. Searey, 3 A. K. Marsh (Ky.), 359.

Burke vs. Bachus, 51 Minn., 174.

Schoener vs. Lessaier, 107 N. Y., 111.

Since the issuance of the patent, or before, there was no statute authorizing the owner of real property to maintain a suit of ejectment against a claimant under a recorded tax deed in the absence of possession.

Graham vs. Florida Land and Mortgage Co., 14 So. Rep., text page 800, 33 Fla. 368.

FLORIDA STATUTES LIMITING THE TIME TO SUE NOT APPLICABLE.

On page 121 of the brief of counsel for appellant on the merits it is argued that the suit should have been brought, set aside the tax deed within one year from its record.

It is sufficient answer to this contention to state that the limitation of time within which to bring suits to set aside tax deeds, cited in counsel's brief, is contained in the Revenue Laws enacted since the tax deeds attacked in this suit were issued.

These statutes were intended to apply only to tax sales made under the statutes of which they are a part. To construe the limitations found in the several Revenue Laws as applicable would be to bring the law in conflict with Section 16 of Article 3 of the Constitution of Florida, which prescribes that each law enacted by the legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title.

The title of the Statutes cited by counsel are, "An Act for the Assessment and Collection of Revenue in this State."

A further answer is that the tax deeds in the case at bar are void upon their face; such a deed the law will not assist.

Redfield vs. Parks, 132 U. S., 239, text 252.

In the case of Sadler vs. Smith, 54 Fla., 671, where a bill was filed to remove cloud on title sixteen years after the date of certain tax deeds and a similar short statute limiting the time to sue to set aside a tax deed was pleaded as a defense to the

suit, the Supreme Court of Florida, on page 675, say:

"Passing by the question 'whether this Statute of Limitations applies to an action to remove a cloud we think that neither Section 400 of the Revised Statutes of 1892 nor the one that succeeded it, Section 591 of the General Statutes of 1906, will apply to a suit to set aside the tax deed involved here because this deed is void."

To the same effect is McKeown vs. Collins, 38 Fla., text 285, citing Bird vs. Benlisa, 142 U. S., 664.

Counsel, on pages 120 and 121 of their brief on final hearing, argue that this suit was barred by Subdivision 4 of Section 1725, General Statutes of Florida.

This section is printed on page 157 of counsel's brief.

Counsel cites the case of Branch vs. Cole, 18 Fla., 368, to sustain their contention.

The case is not applicable.

That case turned upon the definition in the code of an action to recover dower and mesne profits. The Court held that a cause of "action" accrued to the party entitled to dower, by adverse possession of the land after the death of the husband, and that it was an action to put a person claiming dower in possession of lands held adversely. The right of the widow to mesne profits accrues from the date the heir takes possession.

In Florida the proceedings for assignment of dower are at law, and Courts of Equity have only a concurrent jurisdiction.

Henderson vs. Chaires, 25 Fla., 26.

The bill in the case at bar was not filed to put the complainants into possession of the land, nor for mesne profits. Appellees were never out of possession and until there was an adverse possession, no cause of action accrued to appellees after the issuance of the patent to them.

Where the subject is peculiarly, appropriately and exclusively within the cognizance of equity the Statute of Limitations is not applicable.

Fonblonque Eq. Book, 1 Ch., 4, Sec. 27, note on p. 330.

Kane vs. Bloodgood, 7 John Ch., 90.

Patterson vs. Hewitt, 195 U. S., text 317.

Elmendorf vs. Taylor, 10 Wh., text 168.

The taking or recording of a deed to a party's land which is or may be deemed to be a cloud on title is not the accruing of a cause of action, within the meaning of the statute prescribing the time when actions shall be brought, though the owner of the fee has a right of action immediately.

As said by Mr. Justice Grover in Miner vs. Beekman, 50 N. Y., text 345, the right to an action to remove cloud is a right inherent in the owner of the fee. The right to have clouds removed, and apparent but not real incumbrances discharged of record exists at all times.

It is a right of a continuing character to which the Statute of Limitations does not apply. The right to bring a bill to remove cloud is never barred while a cloud continues to exist.

A cloud on title is like a continuing nuisance or cause for divorce. A party may or may not seek relief against it. He has the option for a reasonable time to not prosecute or prosecute. In the case of cloud on title his delay must be reasonable under the circumstances.

That the limitation of four years, whether under the revenue law or under Section 1725, General Statutes, does not apply to this action is settled by the case of Dees vs. Smith, 55 Fla., 652. On page 656 the Court says:

"Again the limitation of four years only bars a suit brought by the former owner or claimant, his heirs, etc., for the recovery of the possession of such land so sold for taxes. This is not a suit for the recovery of the possession of land sold for taxes, but a suit to remove a cloud upon the title of the land. The limitation created by this statute does not apply to an equitable suit to remove a cloud."

The case of Branch vs. Cole was decided in 1881. At that date the only Statute of Limitations existing in Florida was Chapter 1869, Act of February 26th, 1872, entitled, "An Act of Limitation in Civil Suits." The Act contained 21 sections and was complete in itself.

In 1892 under the authority of Chapter 3905, laws of Florida, approved June 1st, 1889, the public statutes of Florida were revised.

In the Revised Statutes of 1892, Chapter 26 is entitled,

"Limitations of Actions." Article I contains provisions applicable to all classes of actions.

Act 2 is entitled, "Provisions Applicable to Real Actions," and embraces Sections 1287 to 1293. Its shortest term of limitation is seven years.

Act 3 is entitled, "Provisions Applicable to Other than Real Actions," and contains Sections 1294 and 1295. The periods of limitation run from 20 years to one year, and apply to actions on contract or tort.

Section 1294 read as follows:

"1294. Limitations—Actions other than those for recovery of real property can only be commenced as follows:" (Subdivisions 1, 2 and 3 prescribe the time for suits upon judgments and contracts in writing, sealed and unsealed).

Sub-division 4 reads:

"4. Within four years an action for any article charged in a store account and any action for relief not specifically provided for in this chapter."

Sub-division 5 embraces contracts not in writing, actions on open account and other similar actions, including actions for relief on the ground of fraud.

It is manifest that the Revisors in their arrangement of the existing Statute of Limitations, which controls the case at bar, if it is controlled by any Statute, which we deny, made that provision of the Statute for relief not specifically provided for applicable to actions other than actions concerning land.

The title of Article 2, "Provisions Applicable to Real Actions," is complete in itself.

It is manifest that when this suit was brought, A. D. 1900, that the General Statute of Limitations of the State of Florida did not apply to suit brought to remove cloud on title any more than did the short Statute of Limitations contained in the revenue law and passed upon in the cited case of Dees vs. Smith.

Of the very many suits to remove cloud on title contained in the Florida Reports it is safe to say that the majority like the case of Sadler vs. Smith, above cited, were brought more than four years after there existed a right to sue, and in no case contained in the books has the defense been made that Sub-division 4 of Section 1725, General Statutes, was a bar to the relief. It

seems to have been universally recognized that this provision of the statute applies only to actions not founded upon the title to real property.

The provision is inconsistent with Section 1719, General Statutes, expressly prescribing that possession must have been held within seven years from the accruing of the right of actions founded upon the title to real property.

In the case of Amos vs. Campbell, 9 Fla., text 196, it is held that in Courts of Equity the defense of the Statute of Limitation is not allowable, that there is no rule defining definitely what lapse of time will bar a purely equitable demand, that each case depends upon its circumstances and the discretion of the Court.

There is another conclusive reason why the Statute of Limitations of the State of Florida must be held not to apply to the case at bar.

THIS IS A SUIT IN THE COURTS OF THE UNITED STATES.

By the Constitution, the judicial power extends to all cases in law and equity arising under the laws of the United States or treaties made under their authority.

If this Court shall take jurisdiction to hear and determine this case it must be because it arises under the laws of the United States, or the Treaty with Spain.

Congress has provided that the Circuit, now the District Court, has jurisdiction of suits of a civil nature at Common Law or in Equity.

By cases in equity is understood suits in which relief is sought according to the principles and practice of Equity jurisdiction as established in English jurisprudence.

Robinson vs. Campbell, 3 Wheat., 212.

U. S. vs. Howland, 4 Wheat, 108.

According to the principles and practice of equity as conducted under English jurisprudence by the very principles upon which the Courts of Equity were established, there can be no fixed rule of time within which Equity Courts may grant relief.

If the short statutory period prescribed by the laws of Flor-

ida apply to this case as contended for by counsel, it would apply to every case of trust or fraud, in fact to every case where relief was sought in Equity.

See the case of Sanchez vs. Dow, 23 Fla., 445. In this case suit was brought in 1876 to enforce a cause of action that accrued in 1808. It was held the action was barred in equity as a stale claim.

It is clear that no such effect can be given to the Florida statutes and so far as relief is sought founded upon a title to real property, the arrangement of Chapter 26, Revised Statutes, makes manifest that the Revisors so arranged the act of 1872 as to preclude any uncertainty as to the application of the short periods of limitations to causes like this.

APPELLANT WITH FULL KNOWLEDGE EXERCISED ITS CHOICE BETWEEN THE TAX TITLE AND APPELLEES' TITLE.

The conclusive answer to all the contentions of counsel that appellees are barred by laches is the fact shown upon the record that appellant is chargeable with notice; that the invalidity of its claim of title was brought to its attention and that in spite of the knowledge it possessed respecting appellees' title it became a voluntary purchaser.

As stated in Brush vs. Ware, 15 Peters 93, text 112, where a defect of title is brought to the knowledge of a purchaser and he then becomes such purchaser, the rights of innocent persons can not be thereby prejudiced.

The record clearly shows that appellant took its chances and with full knowledge of appellees' title preferred to acquire the tax title rather than acquire a title under patent from the United States.

This evidence appearing in the record is conclusive.

Appellant put in evidence as his Exhibit "14" a certified copy of the survey of the lands as a private claim which it is evident it had held since May 19th, 1901, and which probably was turned over to it when it took its conveyance from the Colonization Company in May, 1900.

The certificate by Surveyor General Bloxham is dated May

28th, 1889, see diagram to be appended to Township 19, Range 28, page 1027 of the record, and further certified to by the Commissioner of the General Land Office, March 19th, 1901, page 1028 of the record.

Immediately upon acquiring the Special Warranty Deed from the Colonization Company, appellant undertook to perfect the tax title by proceedings **in rei perpetuam.**

The record pages 938 and 961 show that as early as May 18, 1900, within eight days from the time it filed its deed from the Colonization Company, appellant began proceedings against appellees to perpetuate the testimony of a large number of witnesses as to the alleged adverse possession of appellees' land by the former claimants under the tax deed made to William Mills in A. D. 1872.

There can be no doubt that these proceedings were a part of a preconceived plan to acquire the tax title and to perfect such title into a valid estate as against the title evidenced by the patent held by appellees.

Neither can there be any doubt that the tax title was acquired and the proceedings had under the advice of counsel.

The theory of counsel in their defense to this suit establishes that it was then deemed the occupancy held by Powell et al. from 1872 to about the time of the big freeze (A. D. 1895) vested an estate in fee in appellant's grantor, the Colonization Company.

Counsel for appellant who conducted the proceedings **in rei** no doubt then advised his client that the tax sales upon which counsel in this suit depend had by lapse of time, and by occupancy and claim of ownership, ripened into an estate in fee and that the Colonization Company in law had a good title to appellees' lands, which had been lost to appellees by reason of the recorded tax deed upon which appellant now bases its claim of title.

No experienced lawyer upon this record can come to any other conclusion than that appellant deliberately made its choice of the title under which it believed it would acquire ownership of the lands in controversy, and that it was guided by counsel.

There is little more doubt that counsel were led to believe that appellees' title had been forfeited by the tax sales. Counsel

was doubtless mislead by the fact that it is true in almost all cases of private land claims in Florida that the land is taxable from the date of confirmation without the issuance of a patent, and failed to recognize that the case at bar was exceptional, and is perhaps the only case where no tax could be assessed upon the lands claimed and confirmed until after the issuance of a patent for the reasons shown in this brief.

The letters written by Mr. Henry S. Wilson to appellees' counsel, found on pages 833 and 834 of the record, show that as late as 1898 appellant was seeking to acquire a large part of the lands in controversy by conveyance from appellees.

Counsel in their brief, page 128, state that nothing appears in the record to show notice to defendant company of any claims of complainants or of persons claiming under Teresa Rodriguez. This statement of counsel does not agree with what appears upon the record.

On page 834 of the record, Exhibit "B" to the deposition of Mr. J. H. G. Martin, shows that Mr. Wilson wrote Shelly & Martin upon a letterhead of the defendant company.

The proceedings **in rei perpetuam,** page 938 **et seq.,** of the record is a proceeding by appellant company, brought as before stated, within eight days of the record of the deed under which appellant claims.

It therefore appears conclusively that within a few days of the time that appellant acquired the tax title claim to appellees' lands, it not only knew of appellees' rights and interests but actually knew the names and places of residence of nearly all of the parties to this suit (see pages 939 and 940 of the record), and the presumption is very strong that whatever knowledge Mr. Henry S. Wilson possessed in 1896 and 1898 when he was negotiating for the purchase of 1,600 acres of appellees' lands appellant possessed, and that Mr. Henry S. Wilson was acting for and on behalf of appellant company.

Where a party seeking to set up an equitable estoppel has knowledge of all the circumstances upon which the right of the party whom he seeks to estop depend, the doctrine is inapplicable.

Story Eq., Sec. 1543, Bigelow on Estoppel, 467-470.

PAYMENT OF TAXES.

Appellees have stood on their legal rights. It may be that in ordinary cases where in good faith under a bona fide claim of title a party in possession has paid taxes upon land claimed, the true owner is obligated to refund the taxes paid to entitle him to a decree in a bill to remove cloud on title; where a party with full knowledge takes a doubtful title with the intention to use the same to acquire a legal title by means of color of title under a void deed and payment of taxes, equity will not require such outlays to be repaid.

Appellees had no obligation to pay taxes prior to the issuance of the patent. Certainly they could not have paid taxes on the 1,600 acres which had been patented to the State of Florida under the swamp land act.

After the issuance of the patent appellees' attorney tendered the taxes paid by appellant's grantor; page 827 of the record.

If in equity appellant is entitled to a refund of taxes paid, appellees on the record have offered to repay the same; page 73 of the record.

If this Court shall be of opinion that it was error in the decree not to have required appellees to repay appellant the taxes paid by it since A. D. 1900, this Court will correct the decree, as it is bound on this appeal to render such a decree as the Circuit Court ought to have rendered.

Wickliff vs. Owens, 17 Howard, 47 (15 L. Ed., 44).

United States vs. Rio Grande Dam, etc., Co., 184 U. S., 416, text 423.

A decree may be affirmed in part and reversed in part.

City of Elizabeth vs. The American, etc., Co., 97 U. S., 126.

United States vs. Eaton, 169 U. S., 331, text 352.

Late Corporation, etc., vs. United States, 140 U. S., 665 (35 L. Ed., 592).

See Scott vs. Donald, 165 U. S., 107 (41 L. Ed., 654), where the decree was amended to restrict it to certain parties.

Section 502, General Statutes of Florida, cited on page 119 of the brief for appellant, requires repayment of taxes paid only

where the person recovering has not paid the taxes for which the land was sold.

When the land was sold for taxes in 1852 and 1872, no tax could lawfully be assessed thereon.

Section 592 has no application where the tax deed is void and not voidable.

Bird vs. Benlisa, 142 U. S., 664.
Townsend vs. Edwards, 25 Fla., 582.
McKeown vs. Collins, 38 Fla., 276, text 285.

ANSWERS TO CONTENTIONS IN THE BRIEF OF APPELLANT ON FINAL HEARING.

The argument found in appellant's brief on the merits, pages 83 to 94, upon appellees' delay in proceeding to set aside the tax sales before the issuance of their patent is sufficiently answered by our argument as to the nature of their title, the character of their grant, and by the fact that until the patent issued the Land Department was administering the land.

It is true the Surveyor General of Florida approved a survey of the lands made by Williams in A. D. 1851 as a private claim, but the plat never became official. See letter of Milton, surveyor general to the Commissioner of the General Land Office, page 848 of the record.

If, as held in the Furman case (180 U. S., 402), the lands became public lands by failure to accept a league square or release the excess or prosecute the claim in the Superior Court, or if the Land Department so held, the contention made on page 58 of the brief of appellant that claimants under Teresa Rodriguez at any time after May, 1852, could have maintained a bill to remove cloud is not sound. Until the Secretary of the Interior reversed the Commissioner of the General Land Office in A. D. 1894 this land was claimed by the United States as public domain and so treated.

It is probably fortunate for appellees that they did not contest the ruling of the Land Department that the Marcos claim was not confirmed by the Act of 1828 as counsel, on pages 56, 124, 133 and 138 of the brief on the merits, states they could have done.

Their delay in prosecuting their claim before the Land Department is no ground of laches with respect to appellant.

If they had never contested the holding of the Land Department appellant would have had to deal with the patents issued by the United States, not one but many.

It is true as counsel says, page 126, that all the tax deeds attacked were made prior to 1889, also that all the laches of appellees occurred long before Mr. Wilson ever heard of the grant, page 128 of their brief, on the merits, but it is not true that appellees could not now maintain suit against the grantors of appellant, or that the title of the persons under whom appellant claims have been settled as between them and appellees.

Appellees had no concern with the tax sale claimants so long as the United States claimed ownership and refused to recognize the grant and issue a patent thereon.

Counsel say, on page 125, the meaning of the Act of Congress existed at the time of the Act.

True, but at that time this Court held that a league square in Florida contained only 4,438 acres of land.

Mitchell vs. United States, 15 Peters, 52, text 57.

Appellant strenuously insists that since the issuance of the patent appellees have not exercised the diligence that entitles them to maintain this suit.

The record shows that previous to the present action they brought a similar action against appellant.

This Court will take into consideration the circumstances which existed, excusing appellees' failure to continue the former suit and delay in instituting the present action.

If appellees owed any duty to appellant to bring a suit to cancel the tax title which appellant by choice acquired with full knowledge of appellees' title under patent from the United States was not appellant in equity and good conscience, under far greater duty to bring suit to settle its own title, and do not all the grounds urged by counsel for appellant as to the propriety and necessity of a suit by appellees apply with much stronger force to the propriety and duty imposed upon appellant

to establish its tax title by decree of a competent court if it had faith in its validity?

Appellant resided in the State of Florida; appears to have acted under the advice of counsel in acquiring the tax title, and concurrently took proceedings in the Circuit Court of Lake County to perpetuate testimony, deemed by counsel necessary to sustain the tax titles.

Being in the jurisdiction of the Court, having its counsel and all the machinery for making good its claim of title, if it was a meritorious claim, why did it not proceed against appellees after their suit brought in 1902 had been dismissed without prejudice in 1904?

It does not lie with appellant to set up the defense of laches on the part of the numerous owners of this land, whose rights could only be enforced, either unitedly at a considerable expense to each of the parties, or by a few on behalf of all at a very large expense to the parties plaintiff.

The Court will realize that it is no easy matter to get a few of a large number of tenants-in-common to advance means to carry on such an expensive litigation as this action has been, and will further realize how difficult it is to get tenants-in-common, residing within the jurisdiction of the Court to unite to maintain their rights in litigated cases. Much more are these difficulties magnified when the common owners reside in a foreign country, speak a foreign language and are generally without property, other than the property in litigation.

On page 47 of appellant's brief on the merits it is said:

"Claimants could not retain full title to this grant and take no action to have it surveyed, and still maintain it was not subject to taxation."

The answer to this contention is that after the time allowed to accept a league square or bring proceedings in the Courts for confirmation of their title, claimants were barred from any proceeding outside the General Land Office, and until the Secretary reversed the holding of the Land Department that a league square was 4,438 acres, they were wholly barred.

While the Land Department denied claimant's right and held the lands to be a part of the Public Domain and refused to

recognize any survey thereof because the claim was not a confirmed claim, the lands were not subject to taxation even though the holding of the Land Department was thereafter reversed and the title of claimants thereafter recognized.

Out of all this protracted argument there is presented for the decision of this Court this simple proposition:

Are lands taxable which the United States, under the Constitution and its laws, holds to be a part of the Public Domain?

On page 123 of appellant's brief it is said:

"Whether or not this land was subject to taxation by the State of Florida from the date of its organization as a State in 1845, depended upon whether Teresa Rodriguez and her heirs had title to the land under the grant as confirmed and not upon the erroneous ruling, if any, made in the Land Department."

We think counsel have misapprehended the law applicable. Whether the lands patented were subject to taxation by the State depended upon the character of the grant by Spain.

The tax laws of Florida did not prescribe the taxation of a right of property, but levied a specific tax of three-fourths of a cent (or less) on each and every acre, and exempted from taxation lands belonging to the United States.

It is undisputed that the Land Department held that the title to Teresa Rodriguez was not confirmed by the Act of 1828. The issue, then is, whether as between the United States and the State of Florida under the revenue law expressly exempting from taxation the lands belonging to the United States, a tax may be levied and collected upon lands which the Federal Government maintain are part of the Public Domain.

We think to ask the question is to answer it.

Counsel rightly apprehend the real issue in this case when they say of the decree rendered by the trial Court and affirmed in the Circuit Court of Appeals, holding that the lands in the grant were not subject to taxation prior to the issuance of the patent.

"This is a vital error in the opinion or decree of the Court in this case."

If the Court holds that the opinion of the Trial Court correctly states the law upon this issue, then the question of parties is a mere matter of procedure, and if the Court also find there has been no such material change in the condition of the property or the relation of the parties as to prohibit appellees from enforcing their rights, it must render a decree upon this appeal against appellant.

On page 49 of the brief it is said:

"The survey of Williams made in 1851, if necessary to segregate it from the Public Domain related back at least to the date of the confirmation of the grant, to-wit: May 3, 1828, and if the property was assessed for taxes as the Rodriguez Grant between May 3, 1828 and 1851, the date of the Williams Survey, such assessment would be valid."

The answer to this contention is that the Williams survey did not segregate the lands from the Public Domain so long as the Commissioner of the General Land Office held that the claim was not confirmed, and a further answer is that the original tax rolls from 1845 to 1851 establish conclusively that the lands were not assessed for taxes.

The American State Papers state, "Not that no survey was furnished to the Commissioners," as stated on page 49 of appellees' brief but state that the "land has never been surveyed," page 115 of the record.

On page 61 of the brief of appellant it is said that complainants have failed to establish that the lands are wild and unoccupied, and on page 102, that the bill can not be maintained because the defendant "is in possession of the lands in controversy."

We think the testimony conclusively establishes that the lands were not in the actual possession of appellant when the bill was filed and that the land is wild and unimproved.

On page 120 of counsel's brief they admit that appellant's "occupancy consists in holding timber lands through its agents without actually residing on it."

On page 64 of their brief counsel contend that a Court of Equity is without jurisdiction in this cause because questions are involved as to the location of the line of the grant.

The only line of the grant which appellant disputes is the south line, and it only disputed the location of that line after it had put in evidence the plat and field notes, showing the true location of the line, and after the discovery had been made during the trial that the cabin built to acquire an adverse occupancy was located upon the land patented to Drawdy.

Jurisdiction having attached when the bill was filed may not be ousted by the contention of the defendant that the complainant is suing with respect to lands which he does not claim.

Appellees contend that the south line of the grant is where the patent recites that it is, and claim no land not included in the grant.

Appellees have submitted no issue as to the possession and right of possession. Their bill was framed to cancel the record title of appellant's because it was void and embraced a body of wild, unimproved land, not in actual possession of the defendant.

On page 71 of counsel's brief on the merits it is said there is no rule of law that would admit these copies "of Church records," on the testimony of Sanchez as to his comparing them with what he understood to be the originals.

Mr. Sanchez was employed to compare the copies furnished appellees by the several priests and secretaries of the churches where the records were found and who were the lawful custodians of such records. His testimony is that he investigated the authority of each document by comparing the same with the original records of the churches and Courts where such records were kept, page 490 of the record.

It appears from the witness' testimony that in each case he found the Church records in the Church where they belonged and in the custody of the lawful custodians.

It is true that to make cumulated proof the witness was asked as to the book from which each certificate had been copied by the priest in charge and which the witness compared with the original record, whether the book of original records

had the appearance of having been kept in regular order, by the parish priest (of the church whose record it purported to be), and the witness answered that it had the appearance of being a book kept in regular order and containing the true records of the Church, page 493 of the record.

We shall not discuss at length the contention stated on page 71 of appellant's brief on the merits, that the method adopted by complainants to make proof of the birth, marriage and death certificates furnished by the several priests and secretaries, having the custody of the Church records in Cuba by a comparison of the copies so furnished with the original Church register "is not sustained by any of the authorities." We will refer to one authority, Peak's Law of Evidence, Norris' edition, 1824, Chapter 2, Section 1, title records.

"The public records are not permitted to be removed from place to place for private use and are, therefore, proved by copies of them, which in the absence of the originals, is the next best evidence. These copies are of three kinds: First,.....; second,.....; third, or lastly a copy examined with the original by a witness and proved by him on oath. As to the mode of examination a distinction has been taken between an examination by the witness assisted by the officer having the custody of the original record and an examination between two strangers. In the former case it is sufficient for the witness to prove that the paper offered in evidence agrees with what the officer read as the contents of the record" (pages 56 to 58).

The authorities cited on pages 71 and 72 of appellant's brief are either not applicable to the case at bar or sustain the method adopted in this case.

On pages 76 and 77 of appellant's brief on the merits in arguing against the weight of the testimony of the witness, Sariol, it is said:

"He does not claim to have made any examination of parish records at that time," the time when the witness was prosecuting before the Land Department appellees' claims; but on page 67 of the brief arguing as to the testimony of Mr. Sariol, it is said:

"This testimony is insufficient and is in effect that he in 1885 looked up certain persons in Havana whom he understood to be the heirs at that time, and he examined church records as to the births, deaths and marriages, referring to certain persons then claiming to be heirs."

The authorities cited by counsel, on page 80 of the brief, are not in point. The case from 11 Wheaton is illustrative. That was a bill filed by certain heirs at law to set aside a conveyance obtained from their ancestor by fraud.

On pages 132 and 133 of the text this Court held that as all the heirs had a vested equitable interest in the property, a decree ought not be made for a sale of the property without bringing in the heirs who were not before the Court, because they ought not to be deprived of their property without being heard and they might prefer to come into partition and redeem their shares by paying their portion of the money with which their ancestor's estate was charged.

Such cases are not authority that some of the tenants-in-common may not bring a bill to remove cloud on title to the common property.

To the contention of counsel for appellant, found on pages 81 to 83 of the brief, that certain outstanding tax sale certificates prevent appellees from maintaining this action, it is sufficient answer to say that each of these certificates was issued upon a tax sale prior to the issuance of the patent and are therefore void on their face.

In answer to the contention of council, found on pages 130, 131 and 132 of their brief on final hearing, that appellees may not take title under the patent from the United States and also contend that their grant was not confirmed because it exceeded a league square, or that it was a conditional grant, we say that counsel do not contend that the grant exceeded a league square. They are very glad to admit that it was less than a league square.

Prior to 1894 a league square in East Florida was held to be 4,438 acres. Since 1894 a league square in East Florida con-

tains 6,002 acres, and by this construction of the law appellees hold their title.

That the grant to their ancestor was conditional and under the Spanish law required a formal and complete title, after a survey thereof had been returned, appears upon the face of the grant. Any question of estoppel rests wholly between the appellees and the United States, with which appellant has no concern.

We deny, however, that appellees have changed their position taken before the Commissioners appointed to settle land claims or before the Interior Department.

In both cases they frankly admitted the character and the extent of their grant, and prayed the United States to confirm the grant made by Estrada, such confirmation carrying with it under the power, lawfully vested in the Commissioner of the General Land Office, to lay off by official survey 5,500 acres out of the Public Domain.

We feel that the facts and law of the case warrant our contention that this Court is without jurisdiction to hear and determine this appeal, and that if the Court has jurisdiction because of the mere accident that appellees derived title through an act of Congress that the Court should not re-examine the general questions of law, determined by the Circuit Court of Appeals, no plain error of law appearing on the face of the record.

Our contentions upon those points have been fully presented to this Court in the briefs filed upon the motion to dismiss for want of jurisdiction and the motion to affirm.

If this Court shall take jurisdiction it is manifest upon reason and the authorities herein set out, that none of appellant's thirty-eight assignments of error have been sustained.

Therefore the decree of the Circuit Court of Appeals should be affirmed.

WILLIAM W. DEWHURST,
JOSEPH H. JONES,
JOHN C. JONES,
Solicitors for Appellees.

Note.—Extract from Volume 8, American State Papers, page 271, referred to by Mr. Chief Justice Marshall in 14 Peters, text 350:

Superior Court of East Florida, July term, 1833.

The United States
vs.
Elizabeth Wiggins
} Land claim, 300 acres.

Antonio Alvarez, keeper of the public archives, sworn as a witness * * *

Witness states that he was employed as a Clerk in the Government Secretary's office here during the Spanish Government, from the year 1807 to the year 1821. * * *

Witness states that persons wishing grants of land from the Spanish Government presented a memorial to the Governor, and he decreed on the memorial, and that decree of the Governor was filed in the office of the Government Secretary, and constantly retained there. * * *

Witness states that when the decree of the Governor ordered a royal title to be issued, the decree was transferred to the Escribano's office, but when the decree did not order a royal title to be issued, the decree remained in the Government Secretary's office * * *

Witness states that the evidence to the Grantee on the making of the grant was a certified copy of the decree, or of the memorial and decree by the Government Secretary.

Witness states that to obtain a royal title a second memorial and decree was necessary which went into the Escrabino's office, in which office royal titles were made. * * *

(From page 273 of the same volume.)

Witness states that when a party got a decree for a royal title he carried it to the Escribano, and the Escribano drew out the royal title in a book and the Governor signed it, and that was the original.

Witness states that the memorial of the party praying for a royal title, together with the certificate of the concession given by the Secretary of the Government, the survey and plat of the land, and the original proof, having complied with the conditions of the concession; and the original decree ordering a title or

patent to be issued in favor of the grantee, was called the expediente, which expediente remained on file in the office of the Escribano.

Witness states that the Escribano had no separate books in which he noted the royal titles; they were issued from those in which they were contained. At every ten sheets of paper on the small books, which he first made, there was a blank sheet left, on which the Escribano made an index of the grants that preceded that sheet, and when he had enough of these sheets or small books, they were bound into large books, and these indexes were taken out and a general index made of the whole book.

Witness states that there was no book in the Secretary of the Government's office, in which a note was made of the concession that issued; they were merely filed away in his office in the loose sheets on which they were made, and were filed away in bundles alphabetically, and without any list.

Examined by United States Attorneys:

Question. Was not the legal estates or title to the land conveyed to the claimant by the royal title issued from the office of the Escribano?

Answer. Yes.

Question. Was there any other mode by which the title from the King was conveyed in full property by the Governors of this province to the claimants of land?

Answer. No other mode except in some cases I have alluded to before, where the Governor has given the party permission to sell his land. * * *

(Page 275 of the same volume.)

"Please examine your office and ascertain to whom the largest quantity of land was confirmed by a royal title in said province previous to the year 1816; state to whom said royal title was made and annex a copy thereof to your answer in this interrogatory?"

In answer to this interrogatory witness answered and said: "The largest quantity of land confirmed by royal (real) title, previous to the year 1816, was to John McQueen, a copy of which is hereto annexed."

(Page 280 of the same volume.)

"Document referred to in third answer of Alvarez."

"Title in favor of Don Juan McQueen of * * * 3,275 acres, at the plantation called * * *

"Don Enrique White, colonel of the royal armies, civil and military governor of this City of St. Augustine, of Florida, and its province, by His Majesty: Whereas in royal order communicated to this Government on the 20th of October, 1790, * * * it is provided, among other things, that * * * there should be granted and surveyed lands gratis in proportion to the workers that each family might have. That Don Juan McQueen, captain of militia * * * having presented himself and taken the customary oath, he solicited of the government, and there were granted, surveyed and delivered him, among other lands, ninety-eight caballerias and eight acres of land at the plantation called * * *, which land is known and distinguished under the following dimensions and lines: The first line runs South — — — — —, The seventh runs North — — — — —, as appears from the certificate given by the Captain, Don Pedro Marrot, commissioned judge for said distribution and measurement of lands, dated the * * * and its corresponding plat, executed by Don Samuel Eastlake, who was surveyor at said measurement. And whereas there has been no title whatever issued to him for proof and security of his dominion to said lands, in the form that it was executed to others; that there has already elapsed more than ten years' uninterrupted possession to obtain the useful and direct dominion to the aforesaid lands, and in absolute property, having built homes upon it, and cultivated them, and finally complied with all the other conditions which the Government established for grants and concessions of this nature, apparent in the title issued to other settlers, as stated in the proceedings moved by the interested soliciting to have issued to him the corresponding titles to the land which he has already measured and bounded, and of which he is in possession: therefore, and in consideration of all of which, having been previously advised by his lordship, my lieutenant auditor of way and assessor-general, I have thought proper to grant to him **as in the name of His Majesty** and of his royal justice which I administer, I do grant to the aforesaid Don Juan McQueen, the aforesaid ninety-eight caballerias and eight

acres of land, of which the said plantation is composed, for himself, his heirs, and successors, in absolute property, and in issuing to him, as by these presents I do, the corresponding title, by which I separate the royal exchequer from the right which to said lands I had, and I cede and transfer it to the aforesaid McQueen, his heirs and successors, that in consequence thereof they may possess it as their own, use and enjoy it free from all encumbrance, with all its inlets, outlets, uses, customs, rights and services with it had, and in right and in law thereto appertained and might belong, and it being their will, they may sell, cede, exchange, transfer and alienate them as may best suit them, in virtue of the royal order already cited. To all of which I interposed my authority as far as I can and of right ought to.

"Given under hand, and countersigned by the undersigned Excribano of His Majesty and of the Government and royal exchequer in this City of St. Augustine, of Florida, the twenty-seventh of February, one thousand eight hundred and four (interlined), to the aforesaid Don Juan McQueen, valid.

"ENRIQUE WHITE.

"By order of His Excellency:

"JOSE DE ZUBIZARETTA,

"Escribano of the Government.

"I certify the foregoing to be a true, correct translation of the Spanish document annexed.

"JOS. S. SANCHEZ,

"In. and Tr. Sup. Court, E. D. F."

An Act supplementary to the several Acts providing for the settlement and confirmation of private land claims in Florida Approved May 23, 1828, Statutes at Large, Vol. 4, page 284.

Section 1. Be it enacted, etc., * * * The claims contained in the reports of the Commissioners of East Florida * * * and recommended for confirmation by said Commissioners * * * be and the same are hereby confirmed to the extent of the quantity contained in one league square to be located by the claimants, or their agents, within the limits of

such claims or surveys filed, as aforesaid, before the said Commissioners, or receiver and register, which location shall be made within the bounds of the original grant, in quantities of not less than one section, and to be bounded by sectional lines.

Sec. 2. Be it Further Enacted, That no more than the quantity of acres contained in a league square shall be confirmed within the bounds of any one grant; and no confirmation shall be effectual until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated a full and final release of all claim to the residue contained in the grant, and where there shall be any minors incapable of acting within said territory of Florida, a relinquishment by the legal guardian shall be sufficient; and thereafter the excess in said grants, respectively, shall be liable to be sold as other public lands of the United States.

Sec. 6. And be it Further Enacted, That all claims to land within the territory of Florida, embraced by the treaty between Spain and the United States of the twenty-second of February, one thousand eight hundred and nineteen, which shall not be decided and finally settled under the foregoing provisions of this Act, containing a greater quantity of land than the Commissioners were authorized to decide and above the amount confirmed by this Act; and which have not been reported, as antedated or forged by said Commissioners, or register and receiver acting as such, shall be received and adjudicated, by the Judge of the Superior Court of the district within which the land lies, upon the petition of the claimant, * * *

Sec. 12. And be it Further Enacted, That any claims to lands, tenements, or hereditaments, within the purview of this Act, which shall not be brought by petition before said Court within one year from the passage of this Act, or which after being brought before said Court, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within two years, shall be forever barred, both at law and in equity; and no other action at common law, or proceeding in equity, shall ever thereafter be sustained in any Court whatever.

An Act to Raise a Revenue for the State of Florida and to Define the Duties of the Assessors and Collectors thereof. Chapter 10, Laws of Florida, approved July 24, 1845. Thompson's Digest, pages 86 et seq.

Section 1. Be it enacted, etc., that a State tax shall be assessed, collected and paid into the treasury of this State each and every year on all such persons and property and in such manner as shall be hereinafter mentioned and prescribed.

Provided that this act shall not be so construed as to authorize the assessing and collecting of any tax * * * on lands belonging to the United States.

Section 2. Be it further enacted, etc., that on all first rate land there shall be assessed and collected a tax of three-fourth of a cent on each and every acre.

Upon second rate land * * * Upon third rate land * * * upon each and every acre.

Section 10. That it shall be the duty of the assessors * * * to proceed immediately after the first of January in each and every year to take down and assess the taxable land in his county as prescribed in this act, and on or before the 1st day of March to make out three books in alphabetical order of all the taxable land in his county, one of which books he shall forward to the comptroller of the treasury, etc.

Section 23. That it shall be the duty of the sheriff in the several counties in this State * * *, after being duly qualified to receive a book or copy of the assessor's tax returns * * * and after the 1st day of March to proceed to the collection of taxes in their respective counties.

Section 24. That the sheriffs of the several counties in this State shall have power * * * from and after the first day in October in each and every year to make distress and sale of the goods and chattels, lands and tenements of all delinquents who shall not have paid taxes due for that year * * * provided always that the sheriff shall give in the nearest newspaper published in the State at least three months' notice previous to the sale of any real estate and in the case of non-residence at least six months' notice of the time and place of said sale, which notice shall contain a particular description of the lands and tenements for sale and what water course it

is situated on, and by what lands the same are bounded, and by whom the same may be owned or claimed and when real property is sold * * * there shall not be sold any one lot containing more than 40 acres of land, but if one lot shall not sell for the amount of taxes due from the delinquent together with all costs and charges that shall have accrued thereon the sheriffs shall sell as many more lots, or parts of lots, as shall raise the full amount due, etc.

Chapter 1713, Laws of Florida, approved June 24, 1869.

An Act for the Assessment and Collection of Revenue.

Be it enacted, etc:

Section 1. All property, real and personal, in this State, not hereby expressly exempt therefrom, shall be subject to taxation in the manner provided for by law.

Section 4. The following property shall be exempt from taxation, first all property, real and personal, of the United States and of this State.

Section 53. If any taxes mentioned in the tax list annexed to his warrant, either on real estate or personal property, shall remain unpaid, and he shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, * * * with a full and perfect description of such real estate, from his tax roll, the amount of taxes remaining unpaid on each parcel and the name of the person taxed, if therein specified, and deliver the same to the county treasurer. A certified copy of the same shall be filed by the county treasurer in the clerk's office.

Section 61. All lands returned to the county treasurer, as provided by law, upon which the taxes, interest and charges shall not be paid, shall be subject to sale and redemption as hereinafter provided.

Section 62. The county treasurer shall make out a statement of all such lands as the taxes shall remain due and unpaid, specifying the amount of taxes due on each parcel, together with the costs of advertising, expense of sale, returns thereof, and conveyances, calculated upon each description. The treas-

urer shall cause such statement to be published in the State paper in the city of Tallahassee, * * * for at least four weeks, a copy of which shall be posted on the courthouse door for four weeks previous to the sale.

Section 63. The county treasurer shall annex, and cause to be published with such statement, a notice that so much of each tract or parcel of land described in such statement as will be necessary for that purpose, will be sold by the county treasurer at the county seat, at such time as he may designate, for the payment of taxes, costs and charges thereon.

Section 64. On the day designated in the notice of sale, the county treasurer shall commence the sale of those lands on which the taxes have not been paid as aforesaid, and shall continue the same, from day to day, until so much of each parcel thereon, and in case there are no bidders, the whole tract shall be bid off by the county treasurer for the use of the county.

Section 67. At the sale of aforesaid, the county treasurer shall give to the purchaser a certificate of such sale, describing the lands purchased and the amount paid therefor, and the treasurer shall receive for such certificate twenty-five cents. The certificate shall be substantially in the following form, to-wit:

County of.....} ss. County Treasurer's Office,
State of Florida, } No.....
.....A. D., 18...

I, ..., Treasurer of the County of ....., in the State of Florida, do hereby certify, that I did, on this.....day of..... A. D., 18.., sell to..... the lands herein described, etc.

Section 73. On the presentation of such certificate or certificates of sale to the county clerk, after the expiration of time provided by law for the redemption of lands sold as aforesaid, he shall execute to the purchaser, or his heirs and assigns, a deed of the land therein described, etc.

Section 74. The purchasers, assigns, or the heirs and legal representatives of purchasers of lands sold at tax sales made by the county treasurer in pursuance of this act, and such persons to whom deeds have been issued by the county clerk

under the provisions of this act, may, at any time, publish * * * a notice calling on all persons who can set up any right to the lands so conveyed in consequence of any informality, or irregularity, or illegality connected with such sale or deed, to show cause at the first Circuit Court which may be held for the county in which such lands are situated, six months after the publication of said notice, why the deed so made should not be confirmed, which notice shall recite the deed in full, and such deed may include the lands which are described in one or more certificates. Such deed shall be issued in the name of the State and county, shall be signed by the county clerk, shall be witnessed by two witnesses, and the seal of the county court be attached thereto.

SECTION 1290 REVISED STATUTES, SECTION 1721 GENERAL STATUTES OF FLORIDA.

Adverse Possession Under Color of Title.

1. Continued Occupation for Seven Years Required.—Whenever it shall appear that the occupant, or those under whom he claims, entered into possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment for seven years, the premises so included shall be deemed to have been held adversely, except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

2. Definition of Possession and Occupation Required.—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied, in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for the ordinary use of the occupant; or

4. Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

Section 1950, General Statutes of Florida. A bill in equity may be brought and prosecuted to a final decree by any person or corporation, **whether in actual possession or not,** claiming title legal or equitable, to real estate against any person or corporation not in actual possession, who claims an adverse estate of interest, legal or equitable, therein for the purpose of determining such estate or interest and quieting or removing clouds from the title to such real estate. It shall be no bar to the granting of relief to the complainant in such cases that the title has not been litigated at law, or that there may be only one litigant on each side of the controversy, or that the adverse claim, estate or interest against which such bill is brought is void on its face, or though not void on its face requires evidence, extrinsic of itself, to establish its validity.

Section 1919, General Statutes of Florida. Courts of equity shall entertain suits by any person claiming to own any timbered lands in this State to enjoin trespassing upon such lands by the cutting of the trees thereon or the removing of logs therefrom or by boxing or scraping the said trees for the purpose of making turpentine or by the removal of turpentine therefrom.

Office Supreme Court, U. S.
FILED
OCT 26 1914
JAMES D. MAHER
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1914

No. 135

WILSON CYPRESS COMPANY
Appellant

vs.

ENRIQUE DEL POZO Y MARCOS, *et al*,
Appellees

Brief For Appellant On Final Hearing

JOHN C. COOPER,
Solicitor for Appellant.

THE DREW PRESS, JACKSONVILLE 276792

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In the Supreme Court of the United States

WILSON CYPRESS COMPANY, *Appellant*,		No. 135,
AGAINST		October Term,
ENRIQUE DEL POZO Y MARCOS *et al.*, *Appellees.*		1914.

BRIEF FOR APPELLANT ON FINAL HEARING.

STATEMENT

The appellees have filed in the above cause a motion to dismiss the appeal taken in the above stated cause from the decree of the United States Circuit Court of Appeals for the Fifth Circuit to the Supreme Court of the United States, on the ground that the said Supreme Court is without jurisdiction to hear and determine said appeal.

This motion was heard at the October Term, 1913, and the decision upon it was continued to the argument on the merits of the cause.

This appeal was taken and allowed from the decree of the United States Circuit Court of Appeals for the Fifth Circuit, on the grounds that said Circuit Court of Appeals had not final jurisdiction in the cause and that the decree of that Court is not made final under the laws of the United States.

Under Section 241 of the Judicial Code, an appeal of right exists in any case in which the judgment or decree of the Circuit Court of Appeals is not made final. Section 128 of the Judicial Code provides that the judgments and decrees of the circuit courts of appeal shall be final in all cases in which the jurisdiction is dependent *entirely* upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states. The case made by the bill of complaint of the appellees in the District Court in this cause presented several Federal questions for determination by that Court. The title claimed and set up by the appellees as complainants in said bill arose through the construction contended for by appellees in that bill of a treaty between the United States and Spain and certain laws of the United States, some of which were enacted to carry into effect the treaty, and others in reference to public lands of the United States. The appellees' claim for the relief prayed in the bill involved and required the construction of this treaty and these laws of the United States.

Subdivision 4 of Rule 6 of this Court provides for submitting motions to dismiss on briefs, and if the Court desires further argument on that subject, it will be ordered in connection with the hearing on the merits.

STATEMENT OF ALLEGATIONS OF BILL.

An examination of the allegations of the bill of complaint will disclose that it was brought to obtain a decree enjoining the appellant from claiming title under certain sales made by the State of Florida for the non-payment of taxes and praying the cancellation of the deeds made in pursuance of these sales and other deeds executed by parties claiming title under said tax sales.

The First allegation of the bill states the appellees' title as being derived from a grant by Spain to one Miguel Marcos and the confirmation by the United States of that grant to his widow and children. This paragraph alleges that the grant was an inchoate right under the laws of

Spain and that under the Eighth Article of the Treaty between the United States and Spain the United States occupied the position of Spain with regard to the grant and that the title thereto passed to the United States subject to the equitable claim of the grantees (pages 2 and 3 of the Record).

The Thirteenth paragraph of the bill states the action of the Board of Land Commissioners recommended a confirmation of this grant and the report of the Board to Congress to that effect. This paragraph of the bill also states that under the provisions of the Act of Congress of May 23, 1828 (4th Statutes at Large, page 284), the grant was confirmed to the extent of a league square to be located within the limits of the original grant (page 7, R.).

The Fourteenth paragraph of the bill alleges that by the terms of the Sixth Section of said Act of Congress, the grantees were required to accept the confirmation of the grant to the extent of a league square or bring proceedings before the Judge of the Superior Court of the District of Florida, and that no such proceedings were brought, and that the ancestors of the appellees were, by said Act of Congress, confirmed in their title to said lands to the extent of a quantity equal to one league square (page 7, R.).

The Fifteenth paragraph of the bill alleges that the Judicial and Executive Branches of the Government of the United States held that the quantity of land contained in a league square is 4,438.68 acres; that it was the duty of the Attorney-General of the Territory to survey the lands so confirmed. This Fifteenth paragraph of the bill then sets out, as one of the Acts of Congress relied upon by the appellees, the Act of March 3, A. D. 1807, by the terms of which it was made unlawful to take possession of, survey or cause to be surveyed, or settle upon, any lands ceded or secured to the United States by any treaty with a foreign nation, or any land, the claim to which had not been recognized or confirmed by the United States (pages 7 and 8, R.).

The Sixteenth paragraph alleges that these lands were surveyed in 1847 as public lands and from 1831 to the 12th of February, 1894, were regarded as public lands. This paragraph states the order of the Land Department of the 12th of February, 1894, declaring this grant to be a valid, confirmed, private grant to Teresa Rodriguez and ordered to be patented, and that on the 26th of June, 1895, the grant was patented by the United States to said Teresa Rodriguez, her heirs, assigns and legal representatives (pages 8 and 9, R.).

The Seventeenth paragraph alleges that from and after May 23, 1828, the date of the Act of Congress above referred to, and until this order of February 12, 1894, Teresa Rodriguez and her heirs, assigns and legal representatives were excluded from the possession of the land by the United States, and the United States had both the legal title and possession and right of possession of said lands, and any occupancy of said lands by any others than the United States was a mere trespass and that the appellees and those under whom they claimed were not able to take possession of the lands or to locate the same, because the United States claimed the nature of the grant was public lands (page 9, R.).

The Eighteenth paragraph of the bill sets out the first of the tax sales sought to be illegal and void and alleges that during this period when the United States was in possession, it had the legal title to these lands, to wit, on the 5th of July, 1852, that the sheriff and tax collector of Orange County, Florida, attempted to sell and convey these lands for non-payment of taxes, and that the deed was placed on the public records; and that the assessment, sale, and deed were null and void because the sale was for the non-payment of taxes for the years 1845 to 1850, inclusive, during which time the legal title to said lands was alleged in the bill to have been held by the United States, and that the United States claimed the ownership and had the possession thereof, and that the said 4,438.68 acres of said grant was so confirmed to Teresa Rodriguez as an unsegregated part thereof, and

that all of said lands were, for the reasons just stated, not subject to taxation (pages 9 and 10, R.). Subdivision 2 of this paragraph further alleges that the said 4,438.68 acres out of such grant was the only portion that could be subject to taxation under the law as construed and announced and held by the Judicial and Executive Branches of the Government of the United States (page 10, R.).

The Nineteenth paragraph of the bill alleges that on the 23rd of April, 1872, the lands contained in this grant were again sold for the non-payment of taxes for the years 1867, 1868 and 1869, and alleges that the ancestors of the appellees were, at that time, the owners of an inchoate right in 4,438.68 acres of said land under said grant by Spain, and that the United States claimed ownership of the whole grant and was in possession thereof and held and treated the lands as public lands of the United States. This paragraph further states that a deed was made under said sale on the 23rd of April, 1872, by one Robert C. Partin as Tax Collector to one William Mills. Subdivision 1 of this paragraph states that the lands were not subject to taxation during said years of 1867, 1868 and 1869, but were at all times between May 23, 1828, and up to 1895, in the adverse possession of the United States claiming to be the owner thereof. This date, May 23, 1828, was the date of the Act of Congress confirming the grant hereinabove referred to; and 1895 is the year in which the patent was made by the United States to Teresa Rodriguez, her heirs, assigns and legal representatives (page 12, R.).

The Twenty-fourth paragraph of the bill alleges that during the time that one Powell occupied portions of this land, the appellees and their predecessors in title were precluded from bringing any action for the recovery of the lands in the occupancy of Powell, for the reason that all the lands contained in the said grant were adversely held and claimed by the United States and held to be public lands by the United States (page 15, R.).

The Twenty-fifth paragraph of the bill asserts that, while the appellees were excluded from possession by the United States, Powell conveyed portions of the lands and certain other tax sales were made of the lands to certain other persons (pages 15, 16, R.).

The Thirty-second paragraph of the bill states the action of the Land Department of the United States; that the United States refused to recognize the grant until November, 1894, when the ruling of the Commissioner of the General Land Office was reversed by the Secretary of the Interior and the United States then recognized the lands as private lands and as belonging to the appellees and to those under whom they claimed. This paragraph further avers that the survey of said private claim or grant was not approved and did not become effective as a segregation of said lands from public domain until June 18th, 1894 (page 18, R.).

The Thirty-third paragraph of the bill states the action of the United States in attempting to convey a portion of these lands included in this grant to the State of Florida (pages 18, 19, R.).

The Thirty-fourth paragraph of the bill alleges that on the 26th of June, 1895, the United States patented to the legal representatives of Teresa Rodriguez the said lands granted to the said Marcos, as set out in paragraph First of the bill (page 19, R.).

The Thirty-fifth paragraph of the bill states that from and after June 26, 1895, the appellees and their predecessors were for the first time entitled to the possession of these lands and from and after said date, said lands first became subject to taxation (pages 19, 20, R.).

In the Thirty-sixth paragraph of the bill, the appellees allege that the patent is the evidence of the action of the United States upon the title to the lands granted to said Marcos, and is a conveyance of the interest of the United States therein, and that the patent is based on the survey approved June 18, 1894. In this paragraph, the appellees then distinctly allege that the United States did not relinquish title and possession until the date of said patent,

to wit, the 26th day of June, 1895, and that until said date the appellees and those under whom they held title had no right to possession of the lands in said patent described. This paragraph further asserts that the obligation to confirm grants of lands assumed by the United States by the Treaty with Spain was political in character and was to be discharged as the United States determined, and that that Government retained possession and title from May 23, 1828, until the issuance of the patent, and that before the approval of the survey of the lands granted to Marcos, the legal title was in the United States, and the claim of the appellees attached to no particular land (page 21, R.).

The prayer of the bill was for an injunction prohibiting the appellant from obtaining or holding possession of these lands and from claiming any right, title and interest in the land under the deeds referred to in the bill, and from selling, conveying or encumbering the land, or from trespassing thereon, and for the cancellation of the several deeds made under said tax sales above referred to and the other deeds made by persons claiming under said tax sales and for the cancellation of all tax sales, tax certificates and tax deeds issued thereon in reference to said lands prior to February 12, 1894, the date of the order of the Secretary of the Interior recognizing this grant as a confirmed grant and directing the issuing of the patent therefor.

From the foregoing references to the bill of complaint, it will clearly be seen that the case attempted to be made by the appellees was that the grant from Spain to Marcos was an inchoate grant and was not confirmed in full and complete title by the Treaty between the United States and Spain, and that the action of the Board of Land Commissioners appointed by the United States did not recognize this grant as a complete grant, and that the grant was not confirmed as a complete and perfect title by the Act of Congress of May 23, 1828. The true construction of the Treaty and its effect upon this grant are directly made necessary by the appellees' bill of com-

plaint to support their case. The true construction and application of the Act of Congress of May 23, 1828, confirming the grant and its effect are made necessary by the appellees' case as stated in the appellees' bill of complaint. The legal effect of the action of the United States Land Department in refusing prior to 1894 to recognize this grant and in attempting to convey portions of it to the State of Florida under the Swamp and Overflow Land Acts is made a part of appellees' case. The alleged necessity of a survey of the grant and of the approval of such survey, is raised by the bill, the question, as to whether a patent is necessary to perfect the title of the appellees, is made a part of the case under which the appellees claim relief in their bill. The construction, application and effect of the Act of Congress of March 3rd, 1807, in preventing persons from taking possession of or surveying lands ceded to the United States, are directly raised by the bill to excuse the appellees and those under whom they claim from surveying or having surveyed this grant and from taking possession or bringing proper action against others who took possession of the grant.

The purposes of the allegations of the bill hereinbefore referred to are to present the case attempted to be stated by the appellees, to-wit, that the sales for non-payment of taxes for the years 1845 to 1851, inclusive, were void, because, as appellees contend, the lands were still a part of the domain of the United States and the United States was in possession of same under its laws, and that the sales for the non-payment of taxes of 1867 to 1869, inclusive, were void for the same reasons.

The bill further attempts to allege that, by reason of the effect of the Acts of Congress referred to in the bill and the true effect and construction of the grant and of the Treaty, the appellees had no right to possession of the land until 1895 and no right to maintain any action based on their claim of title to the land. These matters as to possession are set up in the bill as a part of the basis of appellees' right of action. It will thus be seen that the claims of title of the appellees and their case and

right to relief depend upon the true construction of the Treaty, the Acts of Congress passed to carry out the Treaty, particularly that of May 23, 1828, the Acts of the Board of Land Commissioners and the Decisions and Rulings of the United States Land Department and the Secretary of the Interior and the nature of the claims of the appellees and those under whom they derived title, to-wit, claims prior to the issuing of the said patent. Other grounds of attack are made in the Bill upon the tax sales of these lands and the deeds under which appellant claimed title, but the taxable character of the land was the principal ground, as shown by the Bill.

STATEMENT ON MERITS OF THE CASE.

Appellant is also herein referred to as "defendant," and appellees as "complainants."

This is a bill in equity filed on May 1, 1907, by the complainants against the defendant, praying a writ of injunction against defendant from taking possession of or disturbing complainant's alleged possession of certain lands patented by the United States to the legal representatives of Teresa Rodriguez and which were originally granted to M. Marcos on the 18th of October, 1815, to-wit, a certain Spanish Grant known as the Rodriguez Grant. The bill further prays that the tax deeds from John Simpson, Sheriff and ex officio Tax Collector of Orange County to John Starke, dated the 5th of July, 1852, recorded in Book "B," pages 277 and 278, and the tax deed from Robert C. Partin, Tax Collector, to William Mills, dated the 23d of April, 1872, recorded in the public records of Orange County, Florida, in Miscellaneous Records 8, page 310, be decreed to be cancelled; and that the deed from William Mills to George C. Powell, dated the 3d of May, 1872, recorded in the records of Orange County, Miscellaneous Records, Book 8, page 312, and the deed from George C. Powell to Henry Sanford, dated the 27th of October, 1881, recorded in Orange County, Book "Y,"

page 652; and deed from George C. Powell to Henry Sanford, dated November 15, 1881, recorded in Orange County in Book "Y," page —; and the deed from Henry S. Sanford to Edward Dawes, George C. Thompson and Anthony Norris, Trustees of the Florida Land and Colonization Company, Limited, dated the 9th of January, A. D. 1884, recorded in Orange County Records, Deed Book 12, page 400; and the deed from Edward Dawes and George Thompson, Trustees of the Florida Land and Colonization Company, Ltd., recorded in Book 35, page 541, Lake County Records; and the deed from the Florida Land and Colonization Company, Limited, to the defendant, Wilson Cypress Company, dated May 3, 1900, and recorded in the public records of Lake County, Florida, in Deed Book 35, page 593, be decreed to be null and void and cancelled of record, and that the Clerk of the Circuit Court for Orange County and the Clerk of the Circuit Court of Lake County be directed to enter upon the margin of the records of said deeds the cancellation thereof, and that defendant be required to surrender for cancellation the deed from the Florida Land and Colonization Company, and all other of said enumerated deeds affecting said property in its possession. The bill further prays that all outstanding tax sale certificates against the lands issued prior to February 12, 1894, and the tax deeds issued thereon be required to be surrendered and cancelled upon making holders thereof parties to the suit. An amended bill was filed praying cancellation of certain other tax deeds to the said Henry S. Sanford and certificates held by the said Henry S. Sanford and by M. O. Crumpler, J. C. Krice and Buffom Loan and Trust Company. The complainants claim to be the heirs at law of Teresa Rodriguez, in whose favor the Grant was reported favorably by the Commissioners in 1825 and confirmed by Act of Congress May 23, 1828. The grounds on which the said deed from Simpson, Tax Collector, to said Starke is prayed to be cancelled are stated in the bill and amended bill. The principal of said grounds are that the lands from 1845 to 1851 were not subject to tax-

ation, the title being in the United States, and that no assessment was made of said lands for taxes, and that the said tax deed from Simpson, Sheriff and Tax Collector, to Starke, as recorded, has no witnesses.

The grounds upon which the deed from Robert C. Partin as Tax Collector to William Mills is prayed to be cancelled are also stated in the bill, the principal of which are that the lands were not subject to taxation and that the said Robert C. Partin as Tax Collector had no authority to issue said deed to the said William Mills. The grounds on which the other deeds are prayed to be cancelled in the original bill are that the said defendants and the grantees in said other deeds claimed under the said deeds from Simpson as Sheriff and Tax Collector to Starke and from Robert C. Partin as Tax Collector to William Mills. The only grounds alleged in the amended bill for cancellation of the other tax deeds and certificates mentioned in the amended bill are that it is claimed by complainants that the property is not subject to taxation. The only party made defendant to the bill is the Wilson Cypress Company.

The defendant alleges in its answer and insists that at the time the said tax deed from Simpson as Sheriff and Tax Collector to Starke was made that the said Rodriguez Grant had been confirmed by Congress to Teresa Rodriguez in accordance with her petition filed with Commissioners, and that it was subject to taxation, title being in her, her heirs and representatives, by virtue of the said Grant made in 1815, reported favorably for confirmation in 1825 and confirmed by the said Act of Congress in 1828, and that the land is sufficiently identified and that the title passed by the Grant under the treaty between Spain and the United States, and that certainly after the confirmation of the Grant by Congress in 1828 it was subject to taxation; that it was not necessary that the said Grant be segregated from the public domain by any further or other proceedings after the confirmation of the Grant, but that if a survey was necessary to be made, that such survey was made in January, 1851.

Under the Acts of Congress it was the duty of the said Teresa Rodriguez or her heirs and representatives to have taken action to have the Grant surveyed and connected with the Government survey and to have furnished the information to the Surveyor General, from which the survey could be made; that the title passed by this Grant was a perfect title, and, therefore, the Grant as such was subject to taxation after the ceding of Florida to the United States, and certainly after the confirmation of the Grant by Act of Congress May 23, 1828. Defendant further insists that after this great lapse of time it will be presumed that the said Theresa Rodriguez or her heirs and representatives had a survey made upon the ground that constitutes this Grant, located same and furnished the said information to the said Survey General, upon which the U. S. Survey of 1851 was made.

In reference to the assessment of said Grant for the years 1845 to 1851, inclusive, defendant insists that after this lapse of time, and the Sheriff and Tax Collector having sold the property for said taxes due for said years, it will be presumed that such assessment was made, and that no sufficient proof has been introduced by complainants to show that no such assessment was made, and that further under the laws of Florida then in force, this property being now claimed to have been the property of Teresa Rodriguez and her children who were absent from the State of Florida, it will be presumed that the property was sold for taxes as that of owners, unknown, and that in such case the assessor was authorized to make a return or statement to the Sheriff of such property and the amounts due thereon, and that thereby the sheriffs were authorized to collect the taxes due upon the property and it was not necessary for such return to appear upon the assessment roll.

Defendant further insists that there was no evidence that the original deed did not have witnesses or was not properly acknowledged for record, and it will be presumed, after this lapse of time, that the original deed had witnesses and was properly acknowledged, the same now

appearing upon the public records of Orange County, Florida, and that if, as matter of fact the original deed did not have witnesses the deed would be void upon its face and that would constitute no ground authorizing a court of equity to decree the cancellation of the deed.

All of the other various grounds upon which it is claimed this deed should be cancelled, found in Paragraph 18 of the answer, have not been established by proof, and after this long lapse of time it will be presumed that the assessment, advertisement and sale were regular and in accordance with the law. In reference to the deed from Robert C. Partin as Tax Collector to William Mills, the objection that the land was not subject to taxation in 1867, 1868 and 1869 is not well taken because the Grant had been confirmed in 1828 by Act of Congress and was a well known tract of land by that name, and in fact had been surveyed in 1851 by M. A. Williams, Deputy Surveyor General, and such survey had been approved by B. A. Putnam, then Surveyor General. The objection stated in the bill to this deed that Robert C. Partin as Tax Collector had no authority to execute the deed but that it should be executed by the County Clerk, if valid, would make the deed void upon its face, and a court of equity has no jurisdiction or authority to order the cancellation of such deed. Defendant insists that this paper is sufficient as a certificate of acknowledgment of the sale for taxes by Robert C. Partin to William Mills, and on said paper the said William Mills, or those claiming under him, would be entitled to a tax deed and that the same constituted an equitable title and color of title. The other specific grounds of objection to the said deed from the said Robert C. Partin as Tax Collector to William Mills contained in Paragraph 20 of the bill have not been established by proof, and it will be presumed after this lapse of time that the said tax proceedings were duly taken and the burden of proof is on the complainant to show that the proceedings were not had or taken, if the complainants seek relief by way of cancellation of the said deed on account of said objection.

The facts as shown by the pleadings and evidence in the case are that the said sale for nonpayment of taxes upon this grant by the said deed from John Simpson as Sheriff and ex officio Tax Collector of Orange County, Florida, to the said John Starke was made on the 5th day of July, 1852, more than fifty years before the filing of the bill of complaint in this cause praying the cancellation of said deed; that the said deed from said R. C. Partin as Tax Collector for Orange County, dated the 23d of April, 1872, was executed and recorded thirty-five years before the filing of the said bill of complaint praying the cancellation of such deed and the recording thereof; that the deed from Mills to Powell prayed to be cancelled was executed and recorded more than thirty-four years before the filing of the bill herein. The deeds from Powell to Sanford were executed in 1881, twenty-six years before the filing of the bill, and recorded in 1884, twenty-three years before the filing of the bill, and that the deed from Sanford to the Trustees of the Florida Land and Colonization Company were executed and recorded twenty-three years before the filing of the bill, and that the deed from the Florida Land and Colonization Company to defendant was executed and recorded on the 3d of May, 1900. The bill of complaint in this cause was filed the first of May, 1907, but two days less than seven years from the date of the executing of the deed to this defendant; that the Grant was made in 1815 and reported favorably for confirmation in 1825 and confirmed by the said Act of Congress of May 23, 1828, and that as shown by the bill, in 1890 complainants sought to procure from the United States a patent to these lands, and no action appears to have been taken by complainants themselves between the confirmation of said Grant in 1828 and 1889 in reference to asserting title or right of possession of such land. On the 12th of February, 1894, the Secretary of the Interior ordered a patent to issue, which was more than thirteen years from the date of said order to the date of the filing of the bill herein. On the 26th of June, 1895, a patent issued, nearly twelve years before the filing of the bill.

Defendant insists that complainants have shown no sufficient facts or reasons excusing their gross laches and that of those under whom they claim title in not sooner taking action to have their rights recognized by the Land Department and in bringing suit in this court to cancel said alleged deeds as soon as they were made and recorded or within a reasonable time thereafter, or certainly after the issuing of the said patent. The only fact that is alleged in the bill is that heretofore, on June 24, 1902, complainants brought suit against defendant in this court to cancel the deed to defendant, and it is further alleged in the bill that without fault of complainants, through the neglect of their counsel they were obliged to dismiss said suit. The answer alleges and the records in said suit show that said bill was not filed until the 24th of June, 1902, and was dismissed on the 4th of April, 1904. This bill was not brought for three years thereafter and for twelve years after the issuing of the patent. The answer further alleges that the record in said case shows the reason why the evidence was not taken was that complainants did not keep in communication with their counsel or furnish their counsel with evidence to introduce in the suit, and that no legal reason has been shown for not prosecuting said suit or for failure to bring and file the present bill for twelve years after the executing of the patent and within two days of seven years after recording the deed to defendant and for the great number of years that have elapsed since the said several deeds were recorded as above mentioned. The defendant demands proof of the pedigree of complainants and that complainants establish that they are the heirs at law of Teresa Rodriguez. Defendant insists also that complainants are barred under the statutes of limitation of the State of Florida from maintaining this bill and are barred by laches and delay and abandonment of the said property of any relief in a court of equity.

The defendant alleges and the proof establishes that the said George C. Powell was in actual occupation and possession of said property from 1872, when the same

was conveyed to him, and he was then living there to 1881 when he conveyed the same to Henry S. Sanford, and for a short time after said conveyance, and the statutes of limitations, as based upon the said possession of said Powell is sufficient to bar the complainants' right to maintain said bill; that after 1881 said Henry S. Sanford and the Florida Land and Colonization Company and this defendant have been in actual possession of the property through their agents residing upon the property and having the care and control of same, and that such possession existed at the time this bill was filed. Defendant further insists in its answer to the bill and the amended bill that all of the necessary parties are not before the court to authorize decree in this cause.

At the time of the filing of the bill defendant was in possession of said lands, and complainants cannot, therefore, maintain a bill to cancel said deed. The grounds stated in the bill for cancellation of same either are not sustained by the evidence or are objections apparent upon the face of said deeds, and complainants would not be entitled to relief upon the said bill. The evidence shows that actual possession by George C. Powell from 1872 to 1881 or 1882, by operating a mill and cutting timber and fencing material and fuel on this land and cultivating portions of it. After the land was purchased by Henry S. Sanford, the evidence of Ingraham shows that he took possession of the land for Sanford and had an agent on the land and received certain fruit from the land. The evidence also shows that F. H. Rand, the agent of the Florida Land and Colonization Company and the Trustees of that company had possession, and agents of that company had possession of the lands from the time they purchased the land until they sold to the Wilson Cypress Company. The Wilson Cypress Company had had an agent upon the land ever since 1900 when they purchased the land. Each of these agents had a cabin or house on the land and resided on the land. The said F. H. Rand paid the taxes for the Florida Colonization Company and the said defendant has paid the taxes ever since 1900.

The complainants in this case and those under whom they claim never paid any taxes or asserted any possession or ownership of said land except the claim of one Martin, their attorney, after the issue of the patent that he went upon the land and appointed one J. W. Owens as agent to look after the land. The testimony of said Owens shows that he never remained in the vicinity of the land or had anything to do with it for more than a year or a year and a half, to-wit, in 1896 and 1897.

Under the above statement of facts the complainants have not only failed to establish the allegations of their bill but are clearly barred in a court of equity by laches and delay and by the statutes of limitation from obtaining the relief prayed in the bill.

SPECIFICATIONS OF ERROR RELIED UPON BY APPELLANT.

These Specifications are as follows:

1. The United States Circuit Court of Appeals erred in holding and deciding that the lands in controversy were not segregated from the public domain and the title thereto remained in the United States until the issuance of Patent, and that therefore they were not taxable by the State of Florida at the several times they were listed for taxes and sold for nonpayment thereof.

2. The Grant involved in this case was a complete and perfect title certainly from May 23rd, 1828, the date of the Act of Congress confirming this Grant, and no title thereafter remained in the United States to this land, and the Court erred in holding to the contrary. See Assignments of Errors Nos. 19 and 20 (Record, p. 1046-1047).

3. This Grant was not a part of the public domain after the Treaty or after May 23rd, 1828, the date of the confirmation of the Grant by Act of Congress, nor at the time of the issue of the Patent in 1895, and the Court

erred in holding to the contrary, being included in Assignments of Errors Nos. 2, 8, 17, 18, 19, 20, 21 and 22.

4. This Grant being one from Spain before the ceding of Florida to the United States, and having been confirmed by Act of Congress of May 23rd, 1828, was subject to taxation prior to its sale in 1852, to-wit: from May 3rd, 1828, the date of said confirmation of said Grant by Act of Congress, and was properly sold for taxes due to the State of Florida in 1852. See Assignments of Errors Nos. 8, 17, 18, 19, 20, 21, 22, 23 and 24 of Record.

5. The bill in this cause could not be maintained in equity on account of lands not being unoccupied, and on account of possession of defendant at the time of filing bill, and the said lands not being in possession of complainants at the time of filing bill—being assignments of error No. 32 and No. 33.

6. The claim of legal title by complainants is not clear, certain, definite and settled, and a court of equity, therefore, has no jurisdiction to entertain the bill in this cause—being assignment of error No. 33.

7. The complainants have not established by the evidence that they are the heirs at law of Teresa Rodriguez, and, therefore, entitled to maintain this suit—being assignments of error No. 4, No. 5, No. 30, Nos. 31 and 37.

8. The complainants were not entitled to maintain this bill, by reason of certain of complainants having proved their pedigree and that under the doctrine of representations they represented all of the heirs of Teresa Rodriguez—being assignment No. 37.

9. The complainants cannot maintain this bill, and the decree thereon is erroneous, because it is brought only against Wilson Cypress Company as defendant, and the record shows that other parties defendant are necessary before the court could enter a decree on this bill and in decreeing cancellation of the deeds therein mentioned, as set forth in assignments of error No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9. No. 36 and No. 37.

10. The complainants' right to maintain this suit is barred by their laches and delay in bringing the suit and

by their abandonment of the property and their claim of title thereto—being assignments of error Nos. 22, 23, 24, 25, 26, 27.

11. The complainants cannot maintain this suit on account of any alleged defect in the execution and acknowledgment of the deeds mentioned in the bill or in the tax proceedings after this long lapse of time, and the court will now presume proper execution and acknowledgment of the deeds and assessments and other tax proceedings under which the sales for taxes were made and the original survey prior to the tax sale in 1852. This Spanish Grant was subject to taxation prior to its sale in 1852, to-wit, from May 3d, 1828, the date of the confirmation of the Grant by Act of Congress, and was properly sold for taxes in 1852. See assignments of error No. 19 to No. 27 inclusive.

12. Under the laws of Florida the tax deeds mentioned in the bill vested in the purchaser all rights, title and interest either in law or equity of the person from whom such taxes are due, and the court erred in holding to the contrary, and entering its decree based thereon. See Assignments of Error, Nos. 6, 7, 8, 17 and 18.

13. The decree states that the tax deed to John Starke and the tax deed to William Mills mentioned therein are based upon assessments of the property prior to the issuance of the patent in 1895, and while the validity of the Grant was denied by the United States, and, therefore, the deeds were null and void. The court erred in this holding and in rendering its decree on this ground or any of the grounds stated in the bill. This is included in assignments Nos. 6, 7, 8, 17, 18, 19, 20, 21 and 22.

14. This suit is barred by the statutes of limitation of the State of Florida and by adverse possession of the defendant and those under whom it claims title, and the court erred in holding to the contrary,—being by assignments No. 19 to No. 25, inclusive, and assignment No. 35.

15. The possession of defendant was sufficient in character to amount to an adverse possession. The complainants alleged the land was wild and unoccupied, and

the burden of this case was on the complainants to prove that allegation in order to maintain this suit. The house occupied by defendant's agent was on the Grant, and the court erred in holding to the contrary of these propositions. See assignments of error Nos. 22, 23, 32, 33, 34 and 35.

16. Defendant had title under other sources of title besides the tax deeds mentioned in the decree, and, therefore, the court erred in rendering its decree that defendant had no title in this land either under the tax deeds mentioned or under other sources of title. See assignments of error Nos. 10 to 16, inclusive, and No. 35.

17. The bill in this case is barred by the statutes of limitations of the State of Florida, being Sections 1718, 1719 and 1721 of the Revised Statutes. See assignments of error Nos. 19 to 25 inclusive, and No. 35.

18. The bill in this case is barred under Subdivision 4 of Section 1725 of the Revised Statutes of the State of Florida. See assignments of error Nos. 19 to 25 inclusive, and No. 35.

19. The bill in this cause is also barred under Section 20 of the Act of 1872, Chapter 1887, and Section 63 of the Act of 1874, Chapter 1976, Laws of Florida, requiring suits to set aside title to be brought within one year after recording the deed, and under similar provisions of the Revenue Acts of the State of Florida since 1874. See assignments of error Nos. 19 to 25 inclusive and No. 35.

20. The court erred in decreeing the cancelling of the several deeds mentioned in the bill of complaint, to-wit, the tax deed to John Starke, dated the 5th of July, 1852, and said deed to William Mills, dated April 23d, 1872, and the said deed from Edwin S. Dawes and George Augustus Thompson, Trustees, to Florida Land and Colonization Company, and the said deed from Florida Land and Colonization Company to Wilson Cypress Company, and that they were null and void and should be cancelled, as stated in assignments of error Nos. 6 to 14, inclusive.

21. The court erred, for the reasons hereinbefore stated in specifications above, in decreeing that the Wilson Cypress Company had no estate, right, title and interest in the said lands described in the decree and in enjoining the Wilson Cypress Company from claiming title or possession under said deeds or right of occupancy,—same being covered by assignments of error No. 13, No. 14, No. 15 and No. 16.

22. The court erred in decreeing the cancellation of said deeds above mentioned and making its final decree herein for all of the reasons hereinabove set forth in said specific assignments, and further in not requiring the complainants to repay to defendants the taxes paid upon said lands by it and by its predecessor in title, the Florida Land and Colonization Company or either, as shown by the evidence, as a condition precedent or a pre-requisite to cancelling the said deeds mentioned and described in said decree. See assignments of error Nos. 1, 3 and 6 to 16 inclusive.

ARGUMENT AS TO JURISDICTION OF THIS APPEAL.

FEDERAL QUESTIONS INVOLVED IN THIS SUIT.

There are, as will be seen from the allegations of the bill, a number of Federal questions distinctly raised by the bill of complaint and necessarily involved in it and passed upon by the courts in making the decrees appealed from herein. These Federal questions are also necessary to be determined in order to sustain the case attempted to be made by the appellees in their bill.

CONSTRUCTION OF TREATY BETWEEN UNITED STATES AND SPAIN.

The appellees in their bill of complaint insist that this grant was not subject to taxation by the State of Florida in the years 1845 to 1851, inclusive, and in the years 1867 to 1869, inclusive, on the alleged ground that the grant of this land from Spain to Marcos was an inchoate or incomplete grant, and that by the true construction of the terms of the treaty the grant did not become a complete and perfect title in Marcos. The defendant insisted in its answer that the grant was confirmed as a complete and perfect title by the force and effect of this treaty. Therefore, the construction and application of the treaty to the grant and the language of the grant must be considered and determined by the Court before it could be held that the lands were not subject to taxation during the years referred to, and that the sales for taxes during those years were void and that the deeds should be cancelled as claimed by appellees in their bill of complaint.

THE EFFECT OF ACTION OF BOARD OF LAND COMMISSIONERS APPOINTED TO EXAMINE THESE LAND GRANTS.

The bill alleges the action of this Board of Land Commissioners reporting this grant to Congress for confirmation and refers to American State Papers where the proceedings of this Board are found, and also in the same paragraph refers to the several Acts of Congress relating thereto and makes the said proceedings of the Board of Land Commissioners and the several Acts of Congress a part of the bill (p. 3 of R.). The nature of the grant as determined by this Board, to-wit, as to whether or not there was a perfect and complete grant vesting complete title, and the construction and effect of each of the Acts of Congress relating thereto and their effect upon the

character of this grant, are thus introduced into the bill of complaint. The several Acts of Congress providing for examination and report upon these grants and the confirmation of the grants must be considered in determining whether or not the grant was a complete title for the purposes of taxation; the Act of Congress of May 8, 1822, referred to and construed in the case of U. S. vs. Percheman, 7 Peters 51, the Act of Congress of February 8, 1827, and the Act of May 23, 1828 (4 Stats. at L. p. 284), and the Acts of May 26, 1830, June 22, 1860, and June 10, 1872. The three latter Acts extended the right of the claimants under this class of grants to present their cases to the United States courts for adjudication. These Acts of Congress are all referred to and set out, in substance, in the case of Mitchell vs. Furman, 180 U. S., 402, 404.

CONSTRUCTION AND EFFECT OF ACT OF MAY 23, 1828 (Stats. at L. p. 284).

This grant having been made for 5,500 acres was confirmed by the force and effect of the Act of Congress of May 23, 1828, above referred to. The construction and application of this Act to the terms of the grant is absolutely necessary to support and maintain the case attempted to be made in the bill by the appellees. They maintain in their bill that the grant was an inchoate or incomplete grant and that under the terms of this Act of Congress a survey of the grant was necessary and a patent was necessary to pass the title of the United States and that the title to the property remained in the United States until the patent was issued in 1895. All of these contentions as to the force and effect of this act of Congress are denied by the defendant and directly put in issue by the bill and answer and passed upon by the District Judge in his decree and opinion. The first portions of the opinion (pp. 91-92 of R.) distinctly set out that the validity of the defendant's title depends entirely upon the question of whether the property was subject

to taxation by the State of Florida prior to the issue of the patent by the United States in 1895. The Court then reviews the acts of Congress of 1825, of 1827 and of 1828 in reference to these grants and determines that the taxation of the land by the State prior to the issue of the patent was not justified, and further determines that no occupation or possession under these tax deeds prior to the issue of the patent was valid, and that persons holding such possession under said deeds could not rely upon the Statutes of Limitation or title by adverse possession. It is therefore apparent from the allegations of the bill and from the judgment of the District Judge, which was affirmed by the U. S. Court of Appeals, that the construction of these acts of Congress was necessary to support and maintain the case made by the complainants in their bill. The U. S. Court of Appeals in its opinion (see pp. 1039-40 of R.) also held and determined that the title to these lands remained in the United States until the issuance of the patent and therefore were not taxable by the State of Florida.

ACTION OF THE U. S. LAND DEPARTMENT AND EFFECT THEREOF ON THE RIGHTS OF APPELLEES AND THOSE UNDER WHOM THEY CLAIM.

The bill alleges that from the year 1831 to the 12th of February, 1894, the U. S. Land Department held and determined that this was not a valid grant and refused to recognize it, and that therefore the possession of and the title to the lands remained in the United States, and that these facts excuse the appellees or those under whom they claim from taking any action in reference to the title or possession of the land. The District Judge in his opinion sustained this construction of the force and effect of the action of the U. S. Land Department and the rulings of the U. S. Land Commission (see pp. 92-93 of R.). The de-

fendants deny that the ruling or action of the Land Department prior to the final decision and ruling by the Secretary of the Interior had any such legal effect upon the possession or title to this land and insist that from the confirmation of the grant by Congress, May 23, 1828, the legal title and right of possession in these lands was in Teresa Rodriguez and her heirs and assigns. The force and effect of the action of the U. S. Land Department and the true construction of the act of May 23, 1828, as to its application to this grant is thus drawn directly in question in this suit. The bill alleged that prior to the ruling of the Secretary of the Interior, February 12, 1894, both the Executive and Judicial Departments of the Government had determined that a league square of land, as mentioned in the act of Congress of May 23, 1828, was 4,438.60 acres, and as this grant contained 5,500 acres, the entire grant was not confirmed by the force and validity of the act of May 23, 1828. The Secretary of the Interior in his opinion and by his order of February 12, 1894, held that a league square was within the meaning of the said act of Congress and claimed 6,002.50 acres, and therefore that by the force and effect of the said act of Congress of May 23, 1828, this grant was fully confirmed and vested title in Teresa Rodriguez, her representatives, heirs and assigns. The ruling therefore of the Secretary of the Interior and the action of the Land Department were directly involved in this case as affecting the taxable character of the land from the date of said act of Congress and the right to the possession of the land by the appellees and those under whom they claim.

THE QUESTION AS TO WHETHER OR NOT A SURVEY AND APPROVAL OF SUCH SURVEY UNDER THE TERMS OF THE GRANT IS INVOLVED IN THIS CASE.

The bill of complaint alleges that a survey of the grant was necessary and further alleges that this survey

was not approved until June 18, 1894. The complainants in their bill refer to the said patent as a part of their case and as a part of the bill. The patent is found on pages 838 *et seq.* of the record and the survey therein referred to on page 839 was made by M. A. Williams in January, 1851, under the contract with Benjamin A. Putnam, Surveyor-General of Florida, on the 19th of October, 1850. The original survey of Williams referred to in the patent and made a part of it was approved the 20th of June, 1851, by B. A. Putnam, Surveyor-General, as shown by exhibit on page 1027 of the record. The appellant alleged in the answer that the grant did not require any survey under the terms of the grant and laws of the United States; that under the proper construction of the laws of the United States the survey was approved by force and effect of the order of approval of B. A. Putnam, Surveyor-General, in 1851, as above referred to. The appellees insist that a survey and approval of the survey was necessary and that the only approval which could be recognized by the Courts of the United States was one made in 1894 and that prior to this approval of the survey in 1894 the land was not subject to taxation. These were Federal questions which depended upon the construction of the laws of the United States for their determination.

APPELLEES INSIST IN THEIR BILL THAT A PATENT WAS NECESSARY TO VEST TITLE IN APPELLEES OR THOSE UNDER WHOM THEY CLAIM BEFORE THE LAND BECAME SUBJECT TO TAXATION.

The bill in this case proceeds upon this theory of the necessity of the issue of a patent to make perfect and complete title of appellees or those under whom they claim before the land could be assessed for taxation or sold for nonpayment of taxes. This question necessarily re-

quires a consideration of the grant from Spain to Marcos and its terms and effect, of the treaty in regard to such grant, the action of the Land Commissioners, and the acts of Congress passed to carry out this treaty. The appellees insisted that no patent from the United States was necessary to perfect this title; that must be determined under the treaty, the terms of the grant and the terms of the acts of Congress, and directly present Federal questions requiring a construction of the treaty and the several acts of Congress applicable to this grant. The appellees in their brief filed on this motion state that their case is simply that of persons claiming under a patent from the United States. It will be seen that this is a case where the appellees claim title to this land as the defendants of the original grantee from Spain (Marcos) and as the descendants of Teresa Rodriguez, to whom, with her children, the grant was confirmed. The determination as to the taxable character of the land, the possession and right of possession of this land prior to the issue of the patent, the effect of the laws of the United States upon the taxable character of the land and the nature of the title of the United States in the land prior to the patent, are all involved in the case, and appellees' right to have these sales for taxes declared void and the deeds made in pursuance of the sale cancelled depend upon the construction that this Court will put upon the Grant, the Treaty and the Acts of Congress, namely, as to whether or not a patent was necessary to issue from the United States to vest such title in the appellees as was subject to taxation.

RIGHT OF POSSESSION BY THE UNITED STATES FROM DATE OF TREATY TO ISSUE OF PATENT.

It is alleged by the appellees in their bill and asserted by them in this case that until a patent issue the possession and right of possession of these lands vested in the

United States under the treaty with Spain and the laws of the United States, and therefore the lands were not taxable, and also that the long years of possession by appellant and those under whom they claimed was of no force and effect to give them title by adverse possession or to bar the complainants' right of action by the Statute of Limitations and laches. The District Judge in his opinion (pp. 91-92 of R.) adopted this view. If the grant is a perfect grant under a proper construction of the grant and the treaty, or a proper construction of the Acts of Congress passed to carry into effect the treaty, taken in connection with the terms of the grant and the treaty, the right of possession is vested in Teresa Rodriguez and her heirs and assigns certainly from the date of the Act of Congress confirming this grant and the appellant and those under whom it claims could acquire title by adverse possession against the appellees and those under whom they claim, and the appellees and those under whom they claim would also be barred in the right to maintain this action by the Statute of Limitation and their laches. The United States has no right of possession in this land after the confirmation of the grant and had no possession under the laws of the United States. All these questions depend on the construction that will be placed by this Court on the grant, on the treaty, and on the said Acts of Congress.

ACT OF CONGRESS OF MARCH 3, A. D. 1807.

In the bill of complaint (p. 8 of R.) it is asserted by appellees that by the force and effect of the act of Congress of March 3, 1807, appellees and those under whom they claim were excluded from the possession of this land, and the United States had possession and the right of possession, and therefore the land was not taxable, and that appellant and those under whom it claims could acquire no title by adverse possession. It will be therefore necessary for this Court in determining the

complainant's case made by its bill to construe this act of Congress. The District Judge in his opinion (p. 92 of R.) found and determined that prior to the issue of the patent the grantee, Teresa Rodriguez, and her representatives, could not have legally reduced this land to possession and in and by said ruling adopted the construction put by the complainants upon this act of March 3, 1807. This therefore is another Federal question directly raised by the bill and involved in this suit.

All of the Federal questions that we have above stated were raised by the appellees in the bill of complaint and directly passed upon and adopted by the District Judge in his opinion and were affirmed by the Court of Appeals in its judgment and decree appealed from herein. We submit that each and every of said matters make necessary a decision of these Federal questions in order to grant the relief prayed by the appellees in their bill of complaint and to establish their rights as set forth in their bill of complaint.

THE TAXABLE CHARACTER OF THE LAND BY STATE AUTHORITIES DURING THE TIME TITLE WAS CLAIMED BY THE UNITED STATES PRESENTS A FEDERAL QUESTION.

As stated in the opinion of the District Judge and affirmed by the United States Circuit Court of Appeals, the chief question in this case depends upon whether the property in question was subject to taxation by state authority prior to the issue of the patent by the United States in 1895.

Under all of the decisions of the United States Supreme Court, the taxable character of lands prior to the issue of a patent by the United States where title is claimed under the United States presents a Federal question which is subject to hearing in the United States Supreme Court. Consideration of some of the cases in this court in which these questions have been considered

will disclose that they are treated as Federal questions and as rights arising under the laws of the United States. The case of *Hussman vs. Durham,* 165 U. S., 145, was a writ of error from this court to the Supreme Court of the State of Iowa. Suit was brought by one Durham in the State District Court in Iowa to quiet his title as against the defendant holding tax title. Judgment was rendered in his favor in the District Court and affirmed by the Supreme Court of Iowa. A writ of error was then taken from the United States Supreme Court to the Supreme Court of Iowa. A motion was made to dismiss the writ of error, and this Court used the following language:

> "A motion to dismiss was submitted by the defendant in error, but as the Supreme Court of the State held that the equitable title apparently conveyed by the proceedings in the United States Land Office in 1858 was of no effect, and the tax titles based thereon of no validity, it is apparent that a right claimed under the authority of the United States was denied and, therefore, this Court has jurisdiction."

Wisconsin C. R. R. Co. vs. Price, 133 U. S., 496, was a writ of error from the United States Supreme Court to the Supreme Court of Wisconsin. A suit was brought in the State Court to enjoin the collection of State taxes upon land claimed under grants from the United States to the Railroad Company.

Carroll vs. Safford, 3 How. 441 (U. S. Supreme Court), was a bill filed in the United States Circuit Court by complainant residing in New York against the County Treasurer of a county in Michigan to enjoin the sale of land for taxes.

Witherspoon vs. Duncan, 4 Wall. 210, was a bill of equity filed in the State Court of Arkansas. It was affirmed on appeal by the Supreme Court of Arkansas and brought by a writ of error to the United States Supreme Court.

Railway Co. vs. Prescott, 16 Wall. 603, was a bill filed to quiet title against defendant claiming under tax title and brought to United States Supreme Court by writ of error to the Supreme Court of Kansas.

In all of the above mentioned cases, the question of the taxable character of the property prior to the issue of a patent of the United States is treated as a Federal question.

In the case of *Spokane Falls, etc., Ry. vs. Ziegler,* 167 U. S. 65, action was brought in the State Court in the State of Washington and removed to the Circuit Court of United States. Judgment was rendered in favor of defendant in that court and the case was then taken by writ of error to the Circuit Court of Appeals of the Ninth Circuit and the judgment of the Circuit Court affirmed. The case was then taken to the United States Supreme Court by writ of error to the Circuit Court of Appeals. The plaintiffs claimed to be in possession of the lands under the laws of the United States and the defendant Railroad Company under the laws of the Territory of Washington. This Court held that this was a case of the plaintiff claiming title under the laws of the United States and the Railroad Company claiming by an act of Congress and, therefore, the Federal question was prevented and the merits of the case were heard and determined.

See also *Doolan vs. Carr,* 125 U. S. 620. Jurisdiction was sustained on the ground that the controversy turned upon the validity of a patent from the United States under which plaintiff claimed title and which was denied by defendant.

See also

Cooke vs. Avery, 147 U. S., 375.

APPELLEES' BILL OF COMPLAINT STATES RIGHTS UNDER THE TREATY BETWEEN SPAIN AND THE UNITED STATES AND ALSO UNDER THE LAWS OF THE UNITED STATES, PARTICULARLY AS TO THE ALLEGED NON-TAXABLE CHARACTER OF THE LANDS IN QUESTION.

APPEAL LIES FROM THE UNITED STATES CIRCUIT COURT OF APPEALS TO UNITED STATES SUPREME COURT WHERE SUCH FEDERAL QUESTIONS ARE INVOLVED.

See *Cousin vs. Labatut,* 19 How 202, 15 L. Ed. 601. In this case it was decided that where the Laws of Congress, and the acts of officers executing them in perfecting titles to public lands, are drawn in question and construed that there existed a Federal question authorizing this Honorable Court to examine the judgment of the final appellate State Court. The same construction of the Act of Congress would apply giving a right of appeal from the judgment of the United States Circuit Court of Appeals to this Court.

The case of *Northern Pacific Ry. Co. vs. Soderberg,* 188 U. S. 526, sustains a right of appeal in an analogous case to the one above. In that case, this Court held as follows:

> "But to impress the attribute of finality upon a judgment of a circuit court of appeals it must appear that the original jurisdiction of the circuit court was dependent entirely upon adverse citizenship. That is not the case here. Plaintiff's bill does indeed set out a diversity of citizenship as one ground of jurisdiction, but as it appears that its title rests upon a proper interpretation of the Land Grant Act of 1864 as to the exception of non-mineral lands, there is

another ground wholly independent of citizenship under that clause of Section 1 of the Act of 1888, 25 Stat. at L. 433, clothing the circuit court in the jurisdiction of all civil suits involving over $2,000 and arising under the constitution or laws of the United States."

A motion to dismiss the appeal was denied.

In the case of *U. S. Fidelity Co. vs. Bray,* 225 U. S. 205, 214, this Court sustained an appeal from a decree of the United States Circuit Court of Appeals in a case where the jurisdiction of a Circuit Court was invoked on the ground of diversity of citizenship and also under certain acts of Congress.

In the case of *Howard vs. U. S., 184 U. S.* 676, 681, an appeal was sustained in suit brought upon a bond of a clerk as a suit arising under the laws of the United States, although jurisdiction by reason of citizenship was also attempted to be alleged.

See also

Spreckels Sugar Refining Co. vs. McLane, 192 U. S. 397, 405.

In the case of *Henningsen vs. U. S. Fid. & G. Co.,* 208 U. S. 404, it is held that, although diversity of citizenship was alleged in the bill, if the grounds of a suit and relief are based on statutes of the United States, which are necessarily elements of a decision for the lower courts, an appeal would lie to the United States Supreme Court to the United States Circuit Court of Appeals. The Court in its opinion (p. 4) uses the following language:

"Diversity of citizenship was, it is true, alleged in the bills, but grounds of suit and relief were also based on the statutes of the United States, as from the discussion of the merits will be seen. Those stat-

utes entered as elements into the decision of the Circuit Court of Appeals, and were necessary elements."

Where the cause of action is based on a statute of the United States, there is an appeal to the United States Supreme Court from the judgment of the Circuit Court of Appeals.

Chicago Junction Ry. Co. vs. Kane, 222 U. S. 223;
Union Pacific Ry. Co. vs. Harris, 158 U. S. 326.

The right to a writ of error from the United States Supreme Court to United States Circuit Court of Appeals is sustained in the case of *Florida Central R. R. Co. vs. Bell*, 176 U. S. 321.

In this last named case a right under the laws of the United States giving jurisdiction was asserted in the Circuit Court and the United States Circuit Court of Appeals and it was held by the United States Supreme Court that a writ of error would lie in such case to review the judgment of the United States Circuit Court of Appeals. This Court, in several cases, has called attention to the language of the judiciary acts of Congress to the effect that the judgment of the United States Circuit Court of Appeals is not final except in cases where the jurisdiction depends entirely upon the opposite parties being citizens of different States and if there is other Federal jurisdiction arising out of questions and rights under the laws of the United States and treaties made with the United States, the right of appeal from the decree of the United States Circuit Court of Appeals exists although there may have been jurisdiction in the case by reason of adverse citizenship.

In addition to the cases cited above, see also

Sonnentheil vs. Moerlein Brewing Co., 172 U. S., 404, 405.

We insist that under all of the foregoing authorities the grounds on which the decree was made cancelling the

deeds under which appellant claims title, as shown by the opinion of a District Court affirmed by the judgment of the United States Circuit Court of Appeals were rights claimed by the appellees under the treaty between Spain and the United States and under the laws of the United States and jurisdiction is, therefore, clear, giving a right of appeal from the decree of the United States Circuit Court of Appeals to this Court.

Mitchell, Governor, etc., of Florida vs. Furman, 180 U. S., 402. This case has been relied upon by appellees in their brief in support of the motion to dismiss. It is stated in their brief that the case at bar is exactly the converse of the Furman case above mentioned. It would seem, from an examination of the opinion, that the federal jurisdiction and the jurisdiction of an appeal from the United States Circuit Court to the Supreme Court of United States was sustained. The Court held as follows:

> "The pleadings, the evidence, and the master's report and opinion considered, we think that rights under the treaty were so far set up and relied on as to give jurisdiction to the Circuit Court and to justify an appeal from its decree directly to this court."

The case of *Northern Pacific Ry. Co. vs. Soderberg,* 188 U. S. 526, above referred to, directly sustains this jurisdiction.

ALLEGATIONS OF APPELLEES' BILL THAT THEY AND THOSE UNDER WHOM THEY CLAIM WERE EXCLUDED FROM POSSESSION BY THE UNITED STATES AND THAT APPELLANT AND THOSE UNDER WHOM IT CLAIMS COULD NOT ACQUIRE TITLE BY ADVERSE POSSESSION UNTIL PATENT ISSUED PRESENTS A FEDERAL QUESTION.

In the bill of complaint in this case in paragraphs Fifteenth, Seventeenth, Twenty-fourth and Thirty-sixth, the appellees assert that no right or title by adverse posses-

sion of these lands could be claimed by appellant and those under whom it claims, because appellees allege that no title or right of possession existed in the appellees or those under whom they claim prior to the issue of the patent and that, during that period, the United States had the title and right of possession and claimed the exclusive ownership of this land. The District Judge and the U. S. Court of Appeals adopted this view of the case (see page 92 of record) and overruled and denied all of the claims of title of the appellant under the Statutes of Limitation and under adverse possession. These claims of the appellees and their bill and this ruling of the Court and its opinion are based upon a construction of the right and title of the United States and the right and title of appellees under the laws of United States during the period from the ceding of the State of Florida by Spain to the United States to the date of the patent, June 26, 1895. This decision is based upon the contention of appellees that the grant was an inchoate title and was not confirmed as a full and perfect title by Act of 1828 and that a further survey and confirmation of the survey and a patent was necessary to vest title and right of possession in the appellees and those under whom they claim. These are rights claimed under the treaty and under the laws of the United States and present for decision in this case Federal Questions which are also subject to review in this Honorable Court.

On account of the existence of all of the Federal questions above referred to and appearing in the appellees' bill of complaint and decided by a District Judge and affirmed by the United States Court of Appeals, we insist that an appeal lies in this case from the judgment and decree of the United States Circuit Court of Appeals to this Honorable Court. The construction contended for by appellees of the Grant and the various acts of Congress referred to in the bill, the treaty between the United States and Spain, the action of the United States Land Department and the decision of the Secretary of the Interior and the effect and construction of a patent from the United States are necessary to the case attempted to be made by

the appellees. Unless the Court below had adopted the constructions insisted upon by appellees, their title in this suit could not and would not have been maintained and the appellant would have been held to have a valid title under the various sales of these lands for nonpayment of taxes and through the many years of actual adverse possession under said tax deeds by appellant and those under whom it claimed title. The appellees' right to have these deeds cancelled under which appellant claims title and the appellees' right as against the adverse possession of appellant and the effect of the Statutes of Limitation were all dependent on these claims made by appellees under the laws of the United States. We, therefore, submit that this motion to dismiss the appeal should be denied.

ARGUMENT ON THE MERITS.

AFTER CONFIRMATION OF THE GRANT BY CONGRESS MAY 23, 1828, IT WAS SUBJECT TO TAXATION, AND, THEREFORE, WAS PROPERLY SOLD IN 1852 FOR NON-PAYMENT OF TAXES DUE FROM 1845 TO 1851.

The court below in this case in and by its decree adjudged that the deeds from John Simpson, Sheriff, to John Starke, dated the 5th of July, 1852, and from Robert C. Partin, Tax Collector of Orange County, Florida, to William Mills, dated the 23d of April, 1872, were based upon assessments prior to the issue of patent by the United States on the 26th of June, 1895, and while the validity of said Grant was denied by the United States through its duly organized Land Department, and, therefore, held the said deeds void. The court based its decision upon the ground that until a patent had issued the land was not subject to taxation because the validity of the Grant was before the Department until the patent issued. The record shows that the patent itself recites this Grant was confirmed by Act of Congress of 23d of

May, 1828. (See page 978 of record.) The plats of the survey of the township, including this Grant, show the approval of the survey by B. A. Putnam, Surveyor General, the 20th of June, 1851. See defendant's Exhibit 14, 37 and 38, pages 1027, 1029, 1030. It thus appears that the Grant was confirmed May 23, 1828, and if any survey was necessary, had been surveyed and the survey approved in 1851. From the date of the confirmation of the Grant it was immaterial whether any dispute existed thereafter in the Department in reference to the Grant or not. The United States finally recognized the Grant as having been a perfect, complete and confirmed Grant from May 23, 1828, and after that it was subject to taxation. The appellees have attacked the power and authority of the State of Florida to tax this Grant on the ground that it was not subject to taxation. This is one of the most important questions in the case, which we will now discuss.

The evidence shows that the lands were surveyed and segregated from the public domain. The boundaries of the township were established in 1845. See plat of survey, defendant's Exhibit "1." The Grant was confirmed on May 23, 1828. The section of this Act confirming the Grant required the claimant to locate the Grant. It will be presumed at this date that after this confirmation claimants located the Grant on the ground and furnished a statement of same to the Surveyor General.

Section 12 of the Act of February 8, 1827, which applies to the Grant in question required the claimants to cause the same to be connected with the township lines of the public surveys and to furnish to the Surveyor of Public lands in Florida such information as would enable him to exhibit accurately the said claims on his township plats. It thus became the duty of the claimants to make a survey of this Grant and it will be presumed that they made such survey prior to 1851 and that Williams in 1851 made his survey from the information furnished by claimants. If the survey was necessary to segregate the land from the public domain so as to make it taxable, it will be presumed at this date that said survey had been made by the claim-

ants themselves, or that the Grant had been located prior to 1845 and was assessed upon such prior location or survey.

NO SURVEY IN FACT WAS NECESSARY TO RENDER THIS LAND TAXABLE.

The land is described in the Grant and the Grant was confirmed by Act of Congress the 23d of May, 1828. Congress did not require a survey before confirming the Grant but confirmed it as described in the Grant. The deed from Simpson, Tax Collector, made in July, 1852, states that he levied upon a certain tract of land supposed to belong to Teresa Rodriguez, and he describes it as lying in Section 37, Township 19, Range 28, and recites that he sells the right, title and interest of the said Teresa Rodriguez and others in and to said tract of land. It is quite apparent that when this deed was made on the 5th of July, 1852 the tract was known as the Teresa Rodriguez Grant, and its location was known to the Sheriff and Tax Collector of said county. The description of the Grant as contained in the Grant itself and as confirmed by Act of Congress rendered that land subject to assessment for taxes as the Teresa Rodriguez Grant. The Grant is dated the 18th of October, 1815, and reported for approval by the Commissioners December 26, 1825. It was an undivided Grant and describes therein certain lands. Williams simply surveyed the land described in the Grant. He ascertained the land either from the description of the Grant or from the previous location and survey of it by the claimants as required by law. In either event the original Grant sufficiently separated it from the public domain to render it taxable or the survey made by the claimants upon which Williams acted rendered it taxable.

U. S. vs. Arredonda, 13 Peters, 130.
U. S. vs. Moreno, 1 Wall., 400.

Freemont vs. U. S., 17 How., 542.
U. S. vs. Vaca, 18 How., 556.
Cousin vs. Labatut, 19 How., 282.

No other survey was necessary. The original Grant so far as appears in this record sufficiently describes the land and segregated it from the public domain.

The Deputy Surveyor General, M. A. Williams, surveyed the Grant and evidently had no difficulty in locating it from the description of the Grant so far as is shown by this record.

During the years 1845 to 1852 inclusive the Grant was a well known body of land, and in 1852 was sold for the nonpayment of taxes as the Rodriguez Grant.

The title to this Grant passed by the Grant from Spain, and the description in the Grant sufficiently identifies it, and thereby segregates it.

If the survey was necessary to segregate it, when it was made in 1851, it related back in legal effect to the date of the Grant or its confirmation by Congress in 1828.

THE GRANT WAS SUBJECT TO TAXATION BY THE STATE OF FLORIDA AS A SPANISH GRANT DURING EACH OF THE YEARS FROM 1845 TO 1851 INCLUSIVE WITHOUT A SURVEY BY THE UNITED STATES, AND COMPLAINANTS CANNOT SET UP WANT OF SURVEY AS GROUNDS FOR SETTING ASIDE SALE OF THE PROPERTY FOR TAXES DURING THAT TIME:

The Act of Congress, Section 12 of the Act of February 8, 1827, required the claimants to cause the same to be connected with the township lines of the public survey and to furnish to the Surveyor of Public Lands in Florida such information as would enable him to exhibit accurately the said claims on his township plats.

Section 1 of the Act of May 23, 1828, requires the

claimant to locate the claim in quantity not less than one league square.

It would be presumed that M. A. Williams in 1851 when he made the survey of the Grant made same as soon as the claimants had furnished the information upon which the survey could be made.

It was the duty of claimants to have required survey to have been made earlier, and they cannot plead their want of diligence in that matter as the reason why the lands should not be charged with taxes to support the Government.

THE GRANT WAS A PERFECT GRANT OF COMPLETE TITLE AND NO SURVEY WAS NECESSARY TO SEGREGATE IT FROM THE PUBLIC DOMAIN. THE GRANT ITSELF SEGREGATED THE LAND FROM THE PUBLIC DOMAIN:

The survey when made in 1851 related back in legal effect to the date of the Grant in 1815, or at least to the date of its confirmation by Congress May 3, 1828, and it was, therefore, subject to taxation during the years 1845 to 1852 inclusive.

It will be presumed that the Grant had been surveyed by the claimants themselves prior to M. A. Williams' survey in 1851, and duly located, and that Williams used such location as the basis of his survey, and it was, therefore, subject to taxation as a Grant from the time of such location and survey by the claimants.

While the American State Papers state no survey was furnished the Commissioners, it may be presumed after this lapse of time that a survey was made at some time prior to 1851, and under Section 7 of the Act of February 8, 1827, the keeper of the public archives furnished same to the Surveyor of public lands and on which the Williams' survey was based.

A perfect Grant is sufficient title to sustain the taxation thereof without the issue of patent and it will be

held that the description in the Grant was sufficient to enable the surveyor to locate the same, and, therefore, the Grant itself identified the property and it was subject to taxation.

WHERE PARTY CLAIMING TITLE TO PUBLIC LANDS HAS COMPLIED WITH THE CONDITIONS ENTITLING HIM TO A TITLE, HIS TITLE IS SUBJECT TO TAXATION:

If the party claiming title to the Grant has the legal or equitable title, it is liable for taxes.

If the Government has ceased to have any beneficial interest in the property it is subject to taxation.

When an entry has been made, the land is subject to taxation, although the patent is not issued.

Where the patent issues on the original proofs of entry, it relates back to the original claim of title and the lands are taxable from the date of the first entry.

The first entry in this case was the date of the complete or perfect Grant, and certainly the date of its confirmation May 23, 1828, by the Act of Congress.

CHARACTER OF TITLE CONVEYED BY THE GRANT:

The Grant was not an inchoate right or permit to occupy the land. The language of the Grant is one of complete title.

See Grant and presentation of same by Teresa Rodriguez shown by American State Papers. (Pages 114 to 116, 216, 217, 218, 969 to 975 of record.)

Report of the Board, dated December 16, 1825, recommending Grant to Congress for confirmation.

THIS GRANT WAS ONE IN CONSIDERATION OF MILITARY SERVICES AND WAS NOT BASED UPON OCCUPATION OF THE LAND, AND IS A GRANT IN FULL TITLE, AND THE PETITION FOR THE GRANT WITH THE SAID GRANT DESCRIBES IT DEFINITELY:

The patent under which complainants claim title recites the presentation of this claim by Teresa Rodriguez and the approval of same by Act of Congress May 23, 1828, and the survey in January 1851 by M. A. Williams under contract with Benjamin Putnam, Surveyor General.

SURVEY BY WILLIAMS IN 1851 RELATED BACK IN LEGAL EFFECT TO THE DATE OF THE GRANT IN 1815 OR TO THE DATE OF ITS CONFIRMATION MADE BY CONGRESS MAY 23, 1828.

The survey of Williams describes the Grant by courses and distances and indicates it by exterior lines, but it necessarily must be the same land which is described in the original Spanish Grant. Williams as Deputy Surveyor General would have no authority to cut out of the public domain fifty-five hundred acres of land for the claimants. His authority was to survey and plat and describe the land as described in the Grant or as previously located and surveyed by the claimants themselves under the Acts of Congress, and it is presumed that he made his survey on information furnished from one or both of these sources. The description must have been sufficient, therefore, either in the Grant or in some previour survey prior to Williams' survey of 1851 to enable him to locate the Grant, and his survey would, therefore, only evidence that the Grant was a well known and well described tract of land in 1845 to 1851 inclusive. This being true, it was subject to taxation. The Williams survey of 1851 only reaffirmed or made a record of the loca-

tion of the Grant as it already existed, and such survey related back in legal effect to the date of the confirmation of the Grant by Congress in 1828.

ALLEGED INDEFINITENESS OF DESCRIPTION IN THE GRANT.

We insist that the description in the Grant is sufficiently certain in itself for a Surveyor to find it, and, therefore, it is subject to taxation. The description certainly was sufficiently certain for M. A. Williams to survey it in 1851, and on that survey patent was based, and appellees claim under that survey and cannot be held to dispute it or question it.

The Grant was subject to Taxation by the State of Florida as a Spanish Grant during each of the years from 1845 to 1851, inclusive, without a further survey by the United States, and complainant cannot set up a Want of Survey as ground for setting aside the sale of the property for taxes during that time.

The Act of Congress, Section 12 of the Act of February 8, 1827, U. S. Statutes at Large, Vol. 4, page 202, required claimants to cause the same to be connected with the boundary lines of the public survey and furnish the Surveyor of Public Lands in Florida such information as will enable him to exhibit accurately the said claims on his township plats.

Said Sec. 12 of said Act required the Surveyor of Public Lands, on information furnished him by the claimants, to exhibit said claims on the township plat. The survey by Williams made in 1851 and approved by Surveyor General Putnam in 1852 referred to in this brief complied with this section of this Act.

Section 3 of the Act of May 3, 1828, U. S. Statutes at Large, Vol. 4, p. 284, provides for the confirmation of Grants and further provides: "Confirmation authorized by this Act shall operate only as a release of any claim had by the United States and not to affect the interest of third persons."

The first section of the Act confirms the claims therein mentioned. This Act does not require the issuance of any Patent to the grantee. Section 8 of the Act of February 8th, 1827, U. S. Statutes at Large, Vol. 4, p. 202, refers to the issue of Patents to lands the Grants of which have already been confirmed, but do not include Grants in excess of 3500 acres mentioned in the first section of the Act.

The Act of January 23, 1832, U. S. Statutes at Large, Vol. 4, page 496, provides only that Patents may issue to the confirmees or to the assignees or present owner when the land has been sold or transferred since the confirmation of the title, and also provides for the issue of Patents upon the production of satisfactory proof of the death of the confirmee to his heirs or legal representatives, or upon the production of a chain of title from the confirmee to the assignees of the confirmee. Neither of these statutes apply to the confirmation of the Grant involved in this case.

Under the Act of May 23, 1828, U. S. Statutes at Large, Vol. 4, p. 284, the Grant was confirmed by the force and effect of the Act; and under Sec. 3 of the Act the confirmation authorized by the Act operated as a release of any claim held by the United States. On that date (May 23rd, 1828) by force of the Act a Grant was confirmed directly to and in favor of Teresa Rodriguez, the petitioner who filed her petition with the Commissioner referred to in the record in this case, and such confirmation operated with the Act of May 23rd, 1828, not only to confirm to her the Grant from Spain mentioned in her petition, but to release to her any claim of the United States.

AFTER THIS LAPSE OF TIME AND WITH THIS DUTY UPON THE CLAIMANTS TO SURVEY AND LOCATE THE GRANT ON THE GROUND, IT IS APPARENT THAT THE WILLIAMS SURVEY WAS MADE FROM THE PREVIOUS LOCATION OF THE GRANT BY THE CLAIMANTS OR FROM INFORMATION FURNISHED BY THEM.

Section 1 of the Act of May 23, 1828, also required the claimants to locate the claim in a quantity not less than one league square. This is the Act under which the Grant was confirmed and upon which confirmation it was subsequently patented. If this location was made as required by law before 1845, it is clear that the land was taxable from the time the location was made. The deed from John Simpson, Sheriff and ex-officio Tax Collector, to John Starke describes the land as the interest of Teresa Rodriguez or as the land of Teresa Rodriguez, and also as fractional Section 37, and the Grant had been surveyed by Williams in 1851 and had been given the description as Section 37, but it evidently was previously known as the Teresa Rodriguez Grant, and there appearing no evidence to the contrary it may conclusively be presumed now that it was assessed in 1845 to 1850, inclusive, as the Teresa Rodriguez Grant, and probably assessed in 1851 also as Section 37 or located as fractional 37 by the claimants in some survey made by them prior to the Williams Survey in 1851 and which was adopted by them. Under the United States Government Survey system, fractional sections above the regular sections from 1 to 36 always begin to number at 37, and the Sheriff or the Tax Assessor may have assessed it as Section 37 knowing that that would be its fractional number whenever officially surveyed. In any event, without positive proof that it had never been located or surveyed by the claimants or any one by their authority and had never been assessed prior to 1851, and we have no such proof in this case, it will be presumed now that it was duly surveyed prior to 1851 and prior to 1845 and that it was duly assessed for the years 1845 to 1851, inclusive, covered by the sale and deed made by Simpson, Sheriff and Tax Collector, to Starke in 1852.

It is urged by the complainants that it had not been segregated from the public domain prior to the alleged confirmation of the Williams survey by W. H. Milton as Surveyor General in 1894, mentioned in the patents. As the law required the claimants to locate their claim and

also to connect it with the township lines and also to furnish the information to the Surveyor General upon which it could be put upon the public plats, they cannot now complain that it had not been previously surveyed. It was the duty of the claimants in any event to have required the survey to have been made earlier than 1851 and they cannot now plead their own want of diligence in not having the lands separated by a survey from the public domain as a reason why the lands should not be charged with its due proportion of the taxes to support the Government. Claimants could not retain full title to this Grant and take no action to have it surveyed and still maintain it was not subject to taxation. Even if the Grant were assessed in 1845 to 1850, inclusive, and prior to the survey of 1851 of Williams, as the Teresa Rodriguez Grant, it could properly be described by Simpson, Tax Collector, in the deed to Starke as Section 37 because that description and the description of the Theresa Rodriguez Grant would mean one and the same thing and describe one and the same tract of land.

THIS GRANT WAS A PERFECT GRANT OF COMPLETE TITLE AND NO SURVEY WAS NECESSARY TO SEGREGATE IT FROM THE PUBLIC DOMAIN.

The terms of the Grant and the description in the Grant in and of themselves segregated and separated this land from the public domain so as to make it taxable. This Grant has a description which is contained in the petition of Marcos asking for the Grant and which is adopted in the order granting title to the land as prayed in the petition. The prayer of the petitioner Miguel Marcos was to grant him "in absolute property fifty-five hundred acres of land which are vacant on the two banks of the creek which comes from the west and discharges itself into the River St. Johns about two miles to the north of the lake known as Long Lake and the mouth of said creek called Big Spring." The decree made on the pe-

tition was as follows: "That there be granted to the interested, *on the terms which he solicits the lands indicated in this memorial* in virtue of the several royal orders which authorize to that effect; that he may be able to prove this concession in any event that the necessary certificate be delivered to him from the Secretary's office." (Signed) "Estrado."

It will be seen this was a Grant of absolute property by its terms. It is not conditional and it describes a certain tract of land. The acreage is given as fifty-five hundred acres. The class of land is given, to-wit, land which was vacant at that time. The description was one which a surveyor having access to the records of the grants and surveys of lands already made under Spanish authority in that neighborhood could locate. It was to be fifty-five hundred acres of land on the two banks of a certain creek. The creek is described by the mouth of it being called "Big Spring" and it is the creek which discharges itself into the River St. Johns, about two miles to the north of the lake known as Long Lake, and the direction of the creek is given as coming from the west and emptying into the St. Johns River. The plat annexed to the Grant and which is the plat made by M. A. Williams, a copy of which is contained in defendant's Exhibit "1," in the United States Land Office shows the location of the Grant is on both sides of this creek and that the creek flows in an east and west direction through the Grant. At any rate, from this description, with such information as must have been furnished to him by the claimants under the law, the Grant was located according to its terms.

This being a perfect grant in itself of complete title and being a well known tract of land under the name of Teresa Rodriguez Grant, the Grant as such was subject to taxation without further survey.

IF A SURVEY WAS NECESSARY, THE LAND MUST HAVE BEEN DULY SURVEYED OR IDENTIFIED PRIOR TO 1845.

It will be presumed that this Grant had been surveyed by the complainants themselves and located by them prior to the M. A. Williams survey in 1851 and that Williams used such location as the basis of his survey and it was, therefore, subject to taxation as a Grant from the time of the location by claimants or from the time that they had located it as required by the Acts of Congress.

The survey of Williams made in 1851, if necessary to segregate it from the public domain, related back at least to the date of the confirmation of the Grant, to-wit, May 3, 1828, and if the property were assessed for taxes as the Rodriguez Grant between May 3, 1828 and 1851, the date of the Williams Survey, such assessment would be valid. The claimants knowing that their land was assessed for taxes even prior to a formal survey in 1851 and that the legal effect of the survey would be to complete their evidence of title, could not permit it to be sold for taxes because the survey, when made, would operate to perfect such tax sale and would relate back to the date of the confirmation of the Grant. The Grant was, therefore, subject to taxation from the years 1845 to 1852, inclusive.

While the American State Papers state that no Spanish survey was furnished to the Commissioners, such survey may in fact have been made during the existence of the Spanish authorities and the evidence of it not produced before the Commissioners but subsequently produced to the Surveyor General. Such survey would then have supported the assessment of the property for taxes. It will be presumed after this lapse of time that a Spanish survey was made prior to the confirmation of the Grant, evidence of which was furnished to the Surveyor General of Florida after the confirmation of the Grant, and that under Section 7 of the Act of February 8, 1827, the keeper of the public archives furnished such record to the Surveyor of the public land and that on such Spanish survey the Williams survey was based.

This Grant being a perfect and unconditional title vested sufficient title in grantees to make it subject to tax-

ation and to sustain taxation thereon without the issue of a patent.

The treaty of the 22nd of February, 1819, in and of itself recognizes and approves the grants of land made by Spain. In the opinion of Chief Justice Marshall in U. S. vs. Percheman, 7 Peters, 51, it was held that the Grants were ratified and confirmed by force of the treaty itself. It was further held that the Act of Congress of May 8, 1822, appointing Commissioners was for the purpose of ascertaining the claims and title to lands within the territory of Florida. The object of the appointment of the Commissioners was the *ascertainment* of such claims and title. The treaty referred to is one ceding Florida from Spain to United States.

In the case of U. S. vs. Arredondo et al., 6 Peters U. S. Supreme Court Reports, 691, it was also determined that the effect of the treaty was to confirm grants made prior thereto. It, therefore, appears that prior to the confirmation of the Grants by Congress that it was confirmed by the terms of the treaty.

See also

U. S. vs. Kingsley, 12 Peters, 476.
U. S. vs. Clark, 16 Peters, 228.

No survey is necessary to the validity of the Grant. The want of survey does not interfere with the title of the grantee.

See

U. S. vs. Arredondo, 13 Peters, 133.

THESE SPANISH GRANTS AND CONCESSIONS IN FLORIDA, WHERE THEY HAVE BEEN CONFIRMED, HAVE ALWAYS BEEN RECOGNIZED AS SUFFICIENT PROOF OF TITLE WITHOUT THE ISSUE OF A PATENT, AND THEY ARE SUFFICIENT SHOWING OF TITLE UNDER WHICH TO SUSTAIN ADVERSE POSSESSION.

See

McGruder & Logan vs. Roe et al., 13 Fla., 603, 609, 611.

McGee vs. Doe, etc., 9 Fla., 383, 392, 393.

If the confirmation of the Grant were necessary subsequent to a survey, this confirmation was made by the Act of Congress of May 23, 1828. The third section in that Act provides that "confirmation authorized by this Act shall operate only as a release of any claim had by the United States, and not to affect the interest of third persons." This Act does not provide for the issue of a patent but the confirmation by the Congress operates as a release of claims of the United States. The survey was not necessary to the title but the confirmation of the Act of Congress fully recognized the Spanish Grant.

WHERE THE GRANTEE CLAIMING TITLE TO PUBLIC LANDS HAS COMPLIED WITH THE CONDITIONS ENTITLING HIM TO A TITLE, HIS TITLE IS SUBJECT TO TAXATION.

In this case the grantee is entitled at any time to a patent as a mere evidence of the confirmation of his Grant already had by the Act of Congress but the patent did not add anything to his title, and the title, is therefore, subject to taxation. When the grantee has complied with the conditions, upon the performance of which he is entitled to a patent, and the Government has ceased to have any interest therein which would justify it in withholding the patent, he is the beneficial owner of the lands and they are subject to taxation as his property.

Wisconsin, etc., R. Co. vs. Price Town, 133 U. S., 496.

Witherspoon vs. Duncan, 4 Wall., 210.

N. P. R. R. Co. vs. Patterson, 154 U. S., 130.

Carroll vs. Safford, 3 How., 441.

Weenona & St. Paul Land Co. vs. Minn., 159 U. S., 526.

Hussman vs. Durham, 165 U. S., 144.

Maish et al. vs. Ariz., 164 U. S., 599.

The laws of Florida in force in 1851 and 1852 authorized the levy for taxes on even the equitable or possessory right and the sale of such right for nonpayment of taxes.

Thompson's Digest, Laws of Florida, page 91, Subdivisions 5 and 6, Sec. 2, and Subdivision 3 of Sec. 4, page 96.
(Copies of foregoing portions of Thompson's Digest are appended to this brief.)

THIS GRANT IS NOT AN INCHOATE RIGHT OR PERMIT TO OCCUPY THE LAND, BUT IS A COMPLETE AND PERFECT TITLE.

The language of the Grant is one of complete title. We have already referred to the petition of Miguel Marcos for this Grant and the order upon the petition. The Commissioners reported the Grant for confirmation by their report dated December 16, 1825. They report there were no conditions attached to the Grant. The Grant was one in consideration of military services and was not based upon occupation of the lands, and by its terms is a grant in full title. Petition for the Grant describes definitely the lands in question. It was competent for the Spanish government to grant lands in consideration of military services. The failure of the Surveyor General to make a survey did not affect the title under this Grant.

WE INSIST THAT THE GRANT WAS A COMPLETE AND PERFECT TITLE AND CERTAINLY TOOK EFFECT FROM THE DATE OF THE ACT OF MAY 23, 1828.

U. S. 4th Statutes at Large, 284.

The first section of this Act confirms the Grant without any further location of same because it was less than 1 league square, as decided by the Secretary of the Interior in his opinion and order referred to in the bill of complaint as dated February 12, 1894. According to the

opinion of the Secretary one league square mentioned in this Section of the Act of May 23, 1828, means 6,002.50 acres on the basis of the French Unit of measure known as an arpen or arpent. Also that if the league square were based on English measure or 2.45 English Statute Miles it would amount to 1.19 square miles or 7,519 acres.

This Grant was a perfect one by its own terms and was recognized by the Act of Congress of May 23, 1828 confirming the Grant and recognized as a known tract of land. The description in the Grant must have been deemed sufficient. It was confirmed without a survey. Section 12 of the Act of February 8, 1827, requires the holders of such claim in effect to survey the claims themselves and furnish to the Surveyor of public lands in Florida the location and survey of their claim. It will be presumed that he did this and that the survey of Williams made in January, 1851, was of a well known and well defined tract. Defendant's Exhibit "1" shows the township was surveyed in 1847. The boundaries of the township were run in 1845. This Grant was surveyed in 1851 and approved June, 1851, by B. A. Putnam, Surveyor General. The Grant had evidently been surveyed by the complainants prior to 1845 and the survey of Williams in 1851 was based on such prior information, and this survey of Williams is the one adopted in the patent and made a part thereof.

The Grant was sufficiently located from 1845 to 1852, inclusive, and the title to same was in the Spanish grantee, and, therefore, it was subject to taxation.

The description of the Grant in the deed shows that it was known as the property of Teresa Rodriguez.

APPELLEES' CONTENTION AS TO NATURE OF THIS GRANT IS UNSOUND.

It is contended by counsel for appellees in their brief filed in this cause that this Grant was conditional. This is not correct. The Grant was one in consideration of Military services performed by Miguel Marcos, and no prior

or subsequent settlement or occupation was necessary to perfect title to such lands.

A similar Grant is involved in the case of U. S. vs. Percheman, 7 Peters, 51, 53. That Grant was based upon Military Services and no proof of occupation or settlement was required, and is sustained as a Grant in full title confirmed by the treaty. The language of petition of Miguel Marcos for this Grant, found on page 116 of the record is "to grant him in *absolute property* 5,500 acres of land," etc. The order is as follows: "That there be granted unto the interested *on the terms which he solicits* the lands indicated in this memorial, etc." The language of the Grant is, therefore, in absolute property. The language of the Grant in the case of United States vs. Percheman, 7 Peters, 53, is a Grant as follows: "I do grant him the two thousand acres of land which he solicits in absolute property in the indicated place." This Grant is signed by "Estrado." The Grant to Miguel Marcos involved in this suit is also signed by "Estrado." He must have been familiar with the services rendered, and the nature and character of the orders authorizing the Grant, and the conditions, if any, upon which the Grant should be made. These Grants appear to be in substance the same and based upon the same class of services. No other or subsequent title or order or Grant was made in the Percheman case and the title was not treated as inchoate but was held to be a perfect title. In the report of the Commissioners, dated January 21, 1826, found on page 971 of the record, it was stated that these Grants in Report No. 3 "comprehends claims exceeding thirty-five hundred acres, titles to which were found amongst the public archives of the country, and are ascertained by the Commissioners to be valid Spanish Grants, and reported accordingly to Congress for confirmation." Among other purposes mentioned in this report for which land was granted are Military Services, page 972 of record, and according to that report the Governors of the provinces were permitted to exercise considerable discretion in the making of such Grants. In

the reports of the Commissioners, dated December 13, 1827, 5 Vol. Am. State Reps., page 403 (Gales & Seaton's Ed.), the report refers to Grant for Military Services during the disturbances of the provinces of 1812. This report also states that Grants for lands for Military Services vary from other Grants as to the condition in reference to cultivation and occupancy. It is also stated that where the Grant is for Military Services, the conditions for the Grant have already been performed, and the Grant, whether by concession or royal order, vests in the grantee a fee simple without danger from abandonment or want of cultivation.

It is said in brief of counsel for appellees that this Grant was but an inchoate right, needing the performance of conditions. We think the answer to all this contention is that these questions were settled by the Grant itself and the report of the Commissioners reporting this Grant as a valid Grant, and reporting it favorably for confirmation, and by the Act of Congress confirming it. The report was that there were no conditions attached to the Grant, and on that basis it was confirmed by Congress. The Commissioners must have ascertained that the grantee was entitled to the Grant and that it was an unconditional Grant.

In the case of U. S. vs. Percheman it was urged that that Grant was void because the order of the 29th of March, 1815, only authorized such Grants not to exceed one hundred acres to the head of the family. The Percheman Grant was for two thousand acres. It is true in that case Percheman was mentioned by name in the order but the court found and held as follows: "It may be added that other claims under the same royal order for the same quantity of land (that is, 2,000 acres) have been admitted by the Receiver and Registrar and have been confirmed by Congress," so that it appears that the practice was not to limit the amount of land even under that order, as contended for by counsel for appellees. In addition to this, it cannot be known at this time what the number of the family or slaves of Marcos was, and after the

making of the Grant and the confirmation of same it will be presumed that he made the proof of facts necessary to entitle him to the number of acres granted. In the report of Commissioners above referred to of December 13, 1827, it is distinctly determined that occupancy or settlement was not a condition of Grants for Military Services, and such Grant is of complete title, and no subsequent or second title is necessary. It is plain, therefore, that this Grant by its own terms is in absolute property, and being for Military Services it is unconditional and is in itself a Grant of full title.

It is further urged by appellees that the description in this Grant was too vague to make it a complete Grant. The language of the Grant is sufficiently definite to be located, and that is certain that can be made certain. The Surveyor of the United States found no difficulty in locating it in 1851, and the law put the duty on the appellees to locate it certainly from 1827 to 1848. Even after 1848, it was still the duty of the claimant to have furnished the Surveyor General with the information on which to connect up such claims with the public surveys as provided in Section 12 of the Act of February 18, 1827, Volume 4, Statutes at large, page 202, and Section 1 of the Act of May 23, 1828, Volume 4, page 284, and Section 7 of the Act of May 26, 1830, Volume 4, Statutes at large, page 405. It was also the duty of the claimants in cases where the Grant exceeded thirty-five hundred acres to present these claims to the Judge of the Superior Court in the said District in which said lands lay in the territory of Florida, to be decided and passed upon as provided in Section 6 of the Act of May 23, 1828, and Section 4 of the Act of May 26, 1830. This right to have the validity and extent of said Grant tested in the said courts was also extended by Act of Congress of June 22, 1860, and further extended until June 10, 1875, by an Act of Congress approved June 10, 1872. The claimants could also have presented the questions involved as to the extent of this Grant to the Interior Department long before 1889, when the correspondence filed in the record shows that it was

presented by counsel to the Land Department and patent demanded. See page 844 of the record.

It was further the duty of the appellees or those under whom they claim to have either brought an action of ejectment against John Starke, to whom the deed was made by Sheriff in 1852, or against Powell, who went into possession of the property in 1872, and such action could have been maintained upon the Grant made to Marcos and the confirmation of same by the Act of Congress of May 23, 1828, and the survey made by Williams in 1851, approved by Benjamin Putnam, Surveyor General. The claimants further were entitled and had a right at any time when the property was attempted to be sold for taxes in 1852 to have filed a bill either to enjoin said sale or afterwards to set aside said tax title based upon the title of appellees or those under whom they claim under the said Grant and said confirmation by Congress thereof and the survey thereof above mentioned. Even before patent issues, the party entitled to a patent has an equitable title, and a bill may be filed by the holder of an equitable title to cancel or set aside clouds upon said equitable title, particularly if same interferes with the obtaining by the party holding the equitable title of the patent.

In the case of Van Wyck vs. Kneaveles, 106 U. S., 360-370, it was held that where the United States had erroneously issued a patent to lands to which a railroad company was entitled that a bill in equity could be maintained by the assignee of the rights of the railroad company against the holder of a patent to cancel same. The court uses this language:

> "The existence of the patent, therefore, embarrasses the assertion of the complainant's rights, that is, it prevents him from abtaining a strictly legal title which would enable him to recover possession of the premises in an action at law. The existence of the patent also creates a cloud upon the title of land."

And the right of the complainant holding such equitable title or right to a patent is sustained in said above mentioned case. In fact, an equitable title is always sufficient upon which to base a bill filed to cancel some cloud upon same if it is certain and definite.

See Sloan vs. Sloan, 25 Fla., 53.
Frost vs. Spitley, 121 U. S., 552-558, L. Ed. 30, p. 1010.
Carroll vs. Safford, 3 How., 441.

A bill, therefore, might have been filed by appellees or those under whom they claim to cancel and set aside these tax deeds at any time after the same were executed and recorded. The appellees and those under whom they claim did not take any action apparently in reference to this Grant from the time it was presented to the Commissioners in 1825 up to the proceedings in the Land Department in Washington, as shown by the record, unless it may be that they furnished some information to the Surveyor General prior to 1851 and on which the survey of 1851 was based, although the record does not disclose what that information was nor whether the claimants had any survey of the land made, upon which the United States Surveyor's survey of 1851 was based.

CASE OF MITCHELL VS. FURMAN, 180 U. S., 402-404.

This case is relied upon by appellees' counsel in their brief to support their contention as to the nature of the Grant involved in the case at bar and the character of the title under said Grant. The case of Mitchell vs. Furman is entirely different in its facts from the case at bar. In the Furman case, the Grant was one of ten thousand acres, and plainly exceeded one league square, and, therefore, it was never confirmed by the Act of Congress of May 23, 1828. In the Furman case the claimants insisted in their bill that the title arose from the Grant without

any confirmation. The court in its opinion decided as follows:

> "It must be remembered that this is not a suit under any of the Acts passed by Congress in reference to the settlement of claims in East Florida but entirely independent of them. According to the theory of appellees those acts have no application whatever."

In other words, in the Furman case it was admitted by the complainants in the bill, who were claimants under the Grant, that the Grant had never been confirmed but they stood entirely upon the Spanish Grant. In the case at bar the claimants always insisted that the Grant was confirmed by the Act of May 23, 1828, the lands in the Grant being less than a league square, and on that contention they obtained their patent from the United States.

In the Furman case, the alleged Grant was based upon either the settler's rights of the claimant, Jesse Fish, who obtained the alleged Grant, or the settler's rights of his father and the purchase by Fish of his father's estate at public sale. In the case at bar, the Grant was made in consideration of Military Services, and was unconditional, and did not require any occupancy to perfect same. In the Furman case, the alleged Grant was not executed by the Governor but was executed by one, Morales. The court in its opinion held that Morales had no power to execute said Grant. In the case at bar the Grant is made and signed by the Governor, Estrado, whose authority is fully sustained and recognized by the Supreme Court of the United States in the case of U. S vs. Percheman, 7 Peters, 57. The court holds in the Furman case that the Grant in the case of U. S. vs. Percheman, 7 Peters, was a complete and perfect title, although it is a title in consideration of military services signed by Estrado and for two thousand acres and not based upon settler's rights or occupancy or the number of members of the family of the grantee or the number of slaves held

by the grantee. In the Furman case it was further held that the Grant being for ten thousand acres, and clearly and distinctly more than a league square, that under the terms of the Act of May 23, 1828, a release should have been made by the claimant to the United States, or action taken by the claimant in the Superior Court for the territory of Florida under the said Acts of Congress of May 23, 1828, May 26, 1830, or under the Acts of June 22, 1860 and June 10, 1872, hereinbefore referred to, and that having failed to apply to the court under either of these Acts for the confirmation of the Grant, and having failed to execute a deed for the excess above a league square that the claimants of Furman and others were barred.

In the said Furman case it also further appeared that the claimants submitted their claims to the Land Department and on August 2nd, 1890, the Commissioners rendered their decision that the lands were public lands and subject to public sales, and on appeal, the Secretary of the Interior on June 22nd, 1893 affirmed this decision, and that no further proceedings were had in the Land Department to review said decision. In the case at bar the Secretary of the Interior sustained this Grant as confirmed under the Act of May 23, 1828, and as being less than a league square, and patent was issued in pursuance of said confirmation of said Act of Congress, so that the case of Mitchell vs. Furman and the case at bar are entirely different and the grounds upon which the Supreme Court in said Mitchell vs. Furman case held the Grant invalid have no application to the suit at bar.

JURISDICTION OF A COURT OF EQUITY IN THIS CAUSE.

The bill alleges that at the time of the filing of the bill the lands were wild and unoccupied. The answer denies this allegation and alleges that defendant was then in occupation of said land. The evidence shows that the defendant from 1900, when it purchased these lands, up to

this date has had an agent in charge and in possession of said lands. Their first agent, one Wofford, who was on the land before defendant purchased, and then L. J. Owens, and after him one Boykin, who was their agent at the time this bill was filed, and posted the said lands and kept persons off of said lands and had charge of same and resided from time to time in the cabin on said land. The lands are shown to be partly swamp, covered with cypress timber, and partly high lands covered with pine timber, and are valuable largely for the timber thereon. In fact, the swamp part of the land is only valuable for the cypress timber thereon. The defendant is the owner of a mill and the only practical possession and control it could make of such lands until it cut the timber thereon was to put some one in charge of the land and keep an agent looking after the land, and this it has done.

Fussell vs. Gregg, 113 U. S. 550.
U. S. vs. Wilson, 118 U. S., 86.
Frost vs. Spitley, 121 U. S., 552.
Whitehead vs. Shattuck, 138 U. S., 146.
Lacassagne vs. Chapino, 144 U. S., 369.

The burden of proof is on the complainants to show that the lands were in fact wild and unoccupied, and this the complainants have failed to do, because it is established in the evidence that the defendant's officers went on the lands when it bought them and put its agent, L. J. Owens, in actual possession of the lands and kept and maintained an agent in charge of said lands, preventing trespasses thereon and preventing taking of the timber from the land. (See pages 336 to 343.) This is the only possession such lands were practically capable of, particularly in an area of fifty-five hundred acres as is contained in this Grant.

In cases of this character, to-wit, a bill filed in equity to cancel deeds, the proofs must show that complainants are in possession or that lands are unoccupied. We submit that the evidence of L. J. Owens, pages of record 336

to 343, of the witness Boykin pages 367 to 370 of record, and of the Secretary of the Company, Wilson, pages 434, 435, 443 of record, show that the company at the time of the filing of this bill had said witness Boykin on the lands as their agent. Defendant company constructed a cabin on said lands for said agent, where he spent a part of his time and he exercised possession of entire Grant. Complainants have sought to show by testimony that this cabin was south of the south line of the Grant. We will discuss this testimony in detail hereafter, but we submit the burden of proof being on them to show that the lands were unoccupied and that the said cabin was not on the land, that they have not established by the preponderance of the testimony that the cabin was not on the land but the testimony of defendant's witnesses show that the natural objects described in the Field Notes and the lines established by the old Government plats and marks establish that the cabin is on the said Grant.

The dispute as to the south line of this Grant and the location and surveys of this line all were questions properly to be determined at law in an action of ejectment. We submit further that possession of a large tract in Florida may be through an agent not actually living on the land.

Sloan vs. Sloan, 25 Fla., p. 53.
Frost vs. Spitley, 121 U. S., 552.
Whitehead vs. Shattuck et al., 138 U. S., 146.

IN SUITS IN EQUITY TO CANCEL DEEDS OR OTHER INSTRUMENTS, THE LEGAL TITLE OF COMPLAINANTS MUST BE CLEAR, CERTAIN, DEFINITE AND SETTLED, OR A COURT OF EQUITY HAS NO JURISDICTION IN SUCH CASES.

In this case the title of complainants is uncertain and is not clear and not definitely settled or determined.

The complainants claim title to the lands in contro-

versy as the heirs at law of Teresa Rodriguez, to whom the Grant was confirmed. As will be seen hereafter the evidence as to the pedigree of complainants and their status as heirs at law of Teresa Rodriguez is incompetent as matter of law and is uncertain and unsatisfactory as matter of fact. No member of the family of Teresa Rodriguez and no one of her descendants testified upon this subject.

The proof is attempted to be made by alleged copies of entries claimed to be found in church records in Cuba. The proof of these entries has not been made in any legal or competent form, as hereinafter set forth. The positive matter stated in the entries does not establish the relationship or pedigree of each of the complainants. But as to certain of the complainants there is no positive proof, even if the certificates are admitted, as will hereinafter appear under discussion of such pedigree. Most of the alleged proof as to complainants' pedigree is found by way of recital of relationship in these certificates and not the substantive matter of the certificates showing marriage, birth and death. No one of the complainants has testified in this case in any manner, and no person who knew the family personally has testified in the case and no member of the family has testified as to relationship of these parties. There is no evidence that complainants, even if shown to be related to Teresa Rodriguez, are her only heirs at law. As to one of the persons named in the certificates, to-wit, Christina del Pozo Marcos de Nunez, it is stated in the certificate that she left a will, but no proof of that will or her disposition of her rights, if any, in this property by that will have been introduced in the case. Upon this ground, the complainants' title is not certain or definite, and such proof should be made in a court of law in an action to try the title.

The complainants claim in the bill and undertake to prove that one Martin, an attorney representing certain persons, who obtained the patent to this property, but not shown to be these complainants or their ancestors, entered upon and took possession of this land in 1896, and placed

one Owen in charge of the property, and thereby undertook to show the possession of the land. The defendant denies that Owen ever was in possession, and asserts that at the time he claims to have taken possession defendant's agent Wofford was in charge of the land and living on the land as the agent of defendant, and parties were then taking timber and palmetto from the lands by permission of the Florida Land and Colonization Company, under whom defendant claims title, and that this continued for some years after the time complainants claim that the said Martin took possession of said land. The question, therefore, of any prior possession of complainants or those under whom they claim is disputed and should be settled in an action at law, and a court of equity in this action has no jurisdiction to try said question.

The defendant claims to have had a house built on this land after it took possession, and that its agent Boykin has resided for parts of the time in this house on this land as its agent. The complainants insist that this house is not upon the land, because they contend that the south line of the Grant is a short distance north of the location of this house. The defendant insists that the south line of the Grant is south of the house and that the house is within the Grant. Proof of the surveys of this land by a number of surveyors has been introduced. This boundary line of the Grant is, therefore, put in dispute and is one of the issues of fact in the case. The questions are involved in the various surveys of this land and the location of the line of the Grant, and evidences on the trees and natural objects are in dispute. We submit that these are questions of title and possession that a court of equity will not undertake to determine.

The defendant insists that it and those under whom it claims, acquired the title to this Grant by adverse possession under color of title, as provided by the laws of Florida. Under statutes of Florida, adverse possession for the statutory period invests the title in the party holding such possession.

If the defendant has established such adverse posses-

sion at any time for the statutory period in it or those under whom it claims, the complainants have no title to the lands and could not maintain bill to cancel the conveyances referred to in the bill of complaint. The period of adverse possession claimed by defendant is from 1872, when G. C. Powell took possession, to the date of the filing of the bill. The possession of G. C. Powell from 1872 until 1882 is established in the testimony, page 262 to 275, and under the statutes of limitations of Florida the said party acquired title by such adverse possession and transferred all his title by his deed to Henry S. Sanford, (pages 482, 483, 955, 328). The possession of Henry S. Sanford is shown in the testimony. The actual period of occupancy by the Florida Land and Colonization Company, through persons actually living on the land from 1887 to 1900, when it transferred the title to the defendant, is established in the evidence, (pages 248 to 252, 955, 329,) and was a period greater than the statutory period of seven years of adverse possession required to give title under such possession to those claiming under color of title. The defendant after it purchased the land first had the witness Wofford on the land for a year or more as its agent living on the land, and then had the witness Owens and the witness Boykin in possession of the land as its agent. (See testimony of Owen, Boykin and Wilson, above mentioned.) The character and extent of possession of these various parties under whom defendant claims and of defendant are questions involving the title to the land and are in dispute. If such periods of adverse possession have been established the complainants have no legal title to the lands and could not maintain the bill in this cause and these are questions properly triable in an action of law.

The only questions that are properly to be tried and determined on a bill filed to cancel deeds and other instruments as being voidable and clouds upon the title are the existence and character of such instruments and the grounds upon which complainants contend that such instruments are voidable and should be cancelled. We

submit that the other questions as to title, possession and right of possession are properly triable only in a court of law.

This is particularly true in the Federal courts, whereby the Act of Congress the right of trial by jury is preserved by such Act and jurisdiction at law is made exclusive in cases involving legal right.

Frost vs. Spitley, 121 U. S., 552.
Orton vs. Smith, 18 How., 263.
Ward vs. Chamberlain, 2 Black 430.
Whitehead vs. Shattuck et al., 138 U. S., 146.

THE COMPLAINANTS HAVE NOT ESTABLISHED BY THE EVIDENCE THAT THEY ARE THE HEIRS AT LAW OF TERESA RODRIGUEZ, AND, THEREFORE, ENTITLED TO MAINTAIN THIS SUIT.

The complainants claim title as the heirs at law of Teresa Rodriguez. The answer demands strict proof that complainants are such heirs, and the burden is, therefore, on complainants to prove same. The evidence offered in this respect is that of complainants' witness Sariol (119 to 155) and the witness Sanchez (448 to 526), together with what purport to be certificates of marriages, births and deaths, pages 984 to 1024.

In cases of this character, to-wit, bills filed in equity to cancel conveyances, the decisions are uniform that the complainant's title must be a legal title and must be clear, undisputed and not doubtful but certain and established. If complainants' legal title is not certain or not distinctly and positively established, such legal title must be established and proven in an action of ejectment at law brought by complainants against defendants, and if it appears that the question of complainants' title or claim of title to the property in question is left in doubt, a court of equity will not in this character of suit try the title. The real purpose of this character of suit is to cancel con-

veyances and the only questions the court should be required to investigate are those in reference to the character of such conveyances.

See authorities already above cited on this subject.

Also

Phelps vs. Harris, 101 U. S., 70.
Dick vs. Foraker, 155 U. S., 454.
Orton vs. Smith, 18 How., 263.

All of the heirs of Teresa Rodriguez should be parties complainant in order to settle the entire litigation.

Vol. 15 Enc. of P. & P., 611-624.
32 Enc. of Law, 1346, 1347.
Theurer et al. vs. Brogan et al., 41 Ark., 93.
Bunce vs. Gallagher, Fed. Cases, Vol. 4, number 2133.

PROOF INSUFFICIENT OF COMPLAINANTS' PEDIGREE AS HEIRS OF TERESA RODRIGUEZ.

We submit that the proof of the pedigree of complainants is entirely insufficient. The proof offered is as follows:

(a) Testimony of Sariol (pages 119 to 155). This testimony is insufficient, and is in effect that he in 1885 looked up certain persons in Havana whom he understood to be the heirs at that time, and he examined church records as to the deaths, births and marriages referring to certain parties then claiming to be heirs. All of this evidence is hearsay. He was not a member of the family, and, therefore, cannot testify from tradition. His statement as to examinations of records at that time is incompetent. Only duly authenticated copies of the records themselves could be admitted as proof.

(b) Testimony of Sariol (148 to 150 inclusive) as to investigation made with J. H. Jones in 1906 or 1907 in-

competent. He did not know personally any of the parties who conversed with him as the then heirs and made no examinations of the records at that time.

(c) Testimony of the records from the church in St. Augustine (196 to 218 and 1004 to 1023 inclusive) only established the marriage of Marcos and Teresa Rodriguez and the births of their children.

(d) Testimony of Sanchez (488 to 526) as to alleged copies of records as to marriages, deaths and births to establish pedigree of present claimants incompetent.

(e) No competent testimony was introduced establishing that the parties signing these several certificates were the custodians of same or that the parties with whom Sanchez claims to have compared them were in fact the custo lians, and no competent evidence that the book or books from which such records were taken were in fact the original records of births, deaths and marriages in the places referred to therein. The depositions of the custodians were not taken to establish these facts. The instruments were not admissible as certified copies of these records because the seals are not of the character nor the records of the character, certified copies of which under the laws of Florida could be introduced in evidence on the faith of the seal.

(f) Custodians of the records in question were neither sworn nor subjected to cross examination nor the books or records produced for inspection by defendant.

(g) The alleged certificates contain recitals as to pedigree of the party in reference to whom the certificate was made either of birth or death. These recitals of such pedigree or ancestry of this party contained in the certificate would not be competent evidence even if the evidence were otherwise proper to be received. The only competent evidence of the facts stated in such recitals would be the deposition of the custodian of the records of the marriages, births and deaths—the subject matter of such recitals.

The complainants in this case, by their solicitors, practically admit in the record that the alleged proof

offered by them only, according to their contention, established pedigrees as to eight of the complainants named in the bill. See pages 72 and 73 of the record. The court in its decree finds and decrees that these eight complainants are entitled to an undivided interest in and to the lands described and for themselves and as representatives of all persons claiming title to said lands through the said Teresa Rodriguez are entitled to maintain this bill. The court further finds and decrees that the deeds mentioned in the decree are clouds upon the title of Teresa Rodriguez, the original grantee under the Spanish Grant, her legal representatives and heirs at law. We submit that the proof offered does not establish the pedigree of either or any of the complainants by any legal evidence and complainants whose pedigrees have not been established are not entitled to a decree under the doctrine of representation.

A careful examination of these certificates will show that they only positively contain in the certificate itself, if the copy were admissible, the following facts:

RECORDS FROM ST. AUGUSTINE.

1. Marriage certificate of Miguel Marcos and Theresa Rodriguez, January 4, 1796.

2. Baptismal certificate of Miguel Joseph Marcos, November 6, 1800.

3. Baptismal certificate Dorothea Marcos, February 9, 1802.

4. Baptismal certificate Mario Gracio Marcos, January 31st, 1805.

EXHIBITS FILED WITH EVIDENCE OF EUGENE M. SANCHEZ, MAY 5, 1910.

1. Death certificate, June 20, 1850, of Maria Rodriguez.

2. Marriage certificate, December 28, 1830, Miguel Marcos and Josefa Maria Diaz.

3. Burial certificate, March 4, 1867, Miguel Marcos.

4. Entry dated March 24, 1871, Felix Genaro born in 1840.

5. Marriage certificate Nicholas del Pozo and Dorothea Paula Marcos, September 20, 1820.

6. Baptismal certificate, August 10, 1832, Christina Pozo.

7. Marriage certificate Allejandro Jose Marcos Nunez Villa de Cencio and Christina del Pozo.

8. Burial certificate, March 6, 1879, Dorothea Marcos Rodriguez.

9. Death certificate, March 31, 1889, Christina del Pozo Marcos de Nunez, died March 30, 1889.

10. Baptismal certificate Ernesto Eleutario, son of Allejandro Nunez Villa de Cencio and Christina del Pozo.

11. Marriage certificate, November 17, 1825, Augustin Garcia and Maria Gracia Marcos.

12. Baptismal certificate Genaro Maria Garcia.

13. Marriage certificate Genaro Maria Garcia and Adela Pechard.

14. Death certificate, November 20, 1886, Genaro Garcia Marcos.

15. Baptismal certificate Augustin Ricardo.

16. Marriage certificate, November 21, 1867, Augustin Ricardo Garcia and Maria de la Concepcion Ochanderena.

17. Baptismal certificate Ricardo Cecelio Marcos, son of Augustin Garcia Marcos.

18. Death certificate, dated April 26, 1836, Augustin Garcia.

Certificate with affidavit of Eugene M. Sanchez, to-wit, certificate of baptism of Lorenzo, son of Genaro Garcia and Adela Pechardo.

We insist, however, that these alleged certificates are not admissible in evidence and are not proven at all for any purpose for the reasons above set forth. There has been no such identification of the records or the character of the records or of the person purporting to have custody of the records making these papers as to justify

their consideration for any purpose. The rules of evidence require that where a record of this kind, which is not proven to be an official record required by the law to be kept in Cuba of the matters referred to, but is introduced as a Church record kept by way of Church custom, and where it is a very old record, the testimony of a credited custodian should be taken by deposition, showing the age and character of the record and the place where it is usually kept and his receiving the same as a record and being the custodian thereof. The testimony of Sanchez in this case does not establish that he personally was the custodian of any of the records he examined or was competent to testify as to the character of such records or the custody of them. There is no rule of law that will admit these copies on the testimony of Sanchez as to his comparing them with what he understood to be the originals. Proof should have been taken in this case of the Custodian of the records to these copies.

These entries and Church registers are admissible, not to prove any collateral fact or statement therein, but to prove merely and solely the fact that the person making the entry knew at that time that the baptism or marriage or funeral as the case may be, had been performed as therein stated. The method adopted by complainants in attempting to make this proof through Sanchez and his examination of the alleged record is not sustained by any of the authorities.

See

Blackburn vs. Crawford, 70 U. S., 175; 18 L. Ed., 186.
3d Wall., 175.
Whitchen vs. McLaughlin, 115 Mass., 167.
Sitler vs. Gehr, 105 Pa. State, 577.
State vs. Tooris, 40 Conn., 145.
Hutchins vs. Gerrist, 52 N. M., 205.
13 Am. Reps., 19.
1 Greenleaf on Evidence, Sec. 508.
Thompson vs. Mason, 4 Ill., App., 452.
1 Greenleaf's Evidence, 493.

As to proper evidence of proving entries in an alleged record of this character or by whom the entries shall be proven:

1st Greenleaf on Evidence, Sec. 120, 16 Ed.
Vol. 10 Enc. of Evidence, 738, 739 and notes.
Durfee vs. Abbott, 61 Mich., 471 (28 N. W., 521.)
Haulton vs. Manteuffel, 51 Minn., (1892), (53 N. W. 541).
Morrison vs. Ferry Co., 47 Mo., 521.
Berry vs. Hull, 6 N. M., 643; (30 Pac. 936).

In addition to the above mentioned facts purporting to be stated positively in the certificates, there are recited the relationship of the parties as follows:

RECITALS IN CERTIFICATES.

1. Miguel Marcos, son of Miguel and Rosa Fuentes. Teresa Rodriguez, daughter of Lorenzo Rodriguez and Isabel Casibada Piuna, and that Teresa Rodriguez was the widow of Julian de Salas.

2. Miguel Joseph Marcos, son of Michael Marcos, son of Joseph and Rosa Fuentes, also son of Teresa Rodriguez, daughter of Lorenzo and Isabel Piuna.

3. Dorothea Marcos, daughter of Michael Marcos, son of Joseph and Rosa Fuentes; also daughter of Theresa Rodriguez who was daughter of Lorenzo and Isabel Piuna.

4. Maria Gracia Marcos, daughter of Michael Marcos, son of Joseph Fuentes and said Maria, daughter of Teresa Rodriguez who was daughter of Lorenzo and Isabel Piuna.

Exhibits of May 5, 1910, with Testimony of Sanchez.

1. Maria Rodriguez, daughter of Lorenzo and Isabel Piuna. Wife second marriage Don Julian Salas.

2. Miguel Marcos, son of Miguel Marcos and Theresa Rodriguez. Josefa Maria Diaz was daughter of Bartolemo Diaz and Blasa Maria Fernandez.

3. Miguel Marcos was son of Miguel Marcos and Theresa Rodriguez and widower of Joseph Diaz.

4. Felix Genaro was son of Miguel Marcos and Josefa Maria Diaz. His paternal grandparents, Don Miguel and Theresa Rodriguez; Maternal, Bartholema and Blasa Maria Fernandez.

5. Nicholas del Pozo was son of Ygnatio Pozo and Rosa de Lima, and she was the daughter of Miguel Marcos and Theresa Rodriguez.

6. Christina Pozo was daughter of Nicholas del Pozo and Dorothea Marcos. Paternal grandparents, Ygnatio Pozo and Rosa de Lima; maternal grandparents, Miguel Marcos and Theresa Rodriguez.

7. Allejandro Jose Marcos Nunez Villa de Cencio, son of Allejandro and Dona Dellen Alvarez. She the daughter of Nicholas and Dorothea Marcos.

8. Dorothea Marcos Rodriguez, daughter of Miguel and Theresa and widow of Nicholas del Pozo Lima. Left eleven children, Rosa, Theresa, Christina, Pillar, Jose, Quintin, Bascillio, Nicholas, Simeion, Lladislao Nicholas, Seraffin, Enrique del Pozo.

Dead, but party to bill.

9. Christina del Pozo Marcos de Nunez, daughter of Nicholas del Pozo Lima and Dorothea Marcos Rodriguez. Married to Allejandro Nunez de Villa Cencio Alvarez, left four children, Allejandro Arturi, Alfredo, Ernesto and Amelia.

10. Ernesto Eleutario, son of Allejandro Nunez Villa de Cencio and Christina del Pozo. Paternal grandparents, Allejandro and Dona Dellin Alvarez. Maternal grandparents, Nicholas and Dorothea Marcos.

11. Don Augustin Garcia was the son of Pedro Garcia and Micella Diaz. Maria Garcia Marcos was the daughter of Miguel Marcos and Theresa Rodriguez.

12. Genaro Maria Garcia was the son of Augustin Garcia and Maria de Gracia Marcos. Paternal grandparents, Pedro Garcia and Micella Diaz. Maternal, Miguel Marcos and Theresa Rodriguez.

13. Genaro Maria Garcia, son of Augustin Garcia

and Maria Gracia Marcos. Adela Pechard daughter of Estaban Pechard and Dolores Valides.

14. Genaro Garcia Marcos, widower of Dona Adelaida Pechard and son of Augustin and Alta Gracia.

15. Augustin Ricardo, son of Augustin Garcia and Maria Marcos. Paternal grandparents, Pedro and Micella Diaz. Maternal, Miguel and Theresa Rodriguez.

16. Augustin Ricardo Garcia was the son of Augustin and Maria Garcia Marcos. Married Maria de la Concepcion Ochanderena. He was the widower of Isabel Prieto. His second marriage to Matilde Waldez.

17. Ricardo Cecelio Marcos, son of Augustin Garcia Marcos and Concepcion Ochanderena. Paternal grandparents, Augustin and Dona Alta Gracia. Maternal, Fernando and Josefa Sanchez.

18. Augustin Garcia, son of Pedro Garcia and Micella Diaz. Married to Maria Marcos. Left as his children, Genaro, Pedro, Miguel, Augustin, Florentina, Maria Gertrudius.

Certificate with affidavit of Eugene M. Sanchez, Lorenzo, son of Genaro and Adela Pechard. Paternal, Augustin and Alta Gracia Marcos. Maternal, Estaban and Dolores Armentoros.

Even if the certificates are accepted as competent proof of all the above facts and recitals, they do not prove the pedigree of the complainants.

These recitals are not relevant to the fact of marriages, births nor deaths purporting to be known to the party who made the entry but are recitals of other facts of parentage derived from other records not identified, and that such recitals are clearly hearsay. These recited facts are not proven by tradition by persons in the family who knew them or by copies of any original records showing such facts but are attempted to be proven from the recitals in the above mentioned certificate of births, marriages and deaths. This is still a more remote attempt to make proof than the positive matter of the births, deaths and marriages positively contained in the record. We

submit such recitals are not permitted as proof by any rule of law.

The attention of the court is especially called to the fact that no one of the complainants who purport to be descendants of Teresa Rodriguez testified as witnesses in this case to the pedigree or relationship of any of the complainants. This proof is usually made by members of the family from their recollections of their ancestors and relations and from statements received by them from their ancestors as to their pedigree and relationship from more remote ancestors. It is remarkable in this case that no one of the complainants or any other person purporting to be a relation or descendant of Theresa Rodriguez testified in the case to anything either as to relationship or claim of title to the property in question or claim of possession or right of possession. These complainants apparently have never made any claim to this property, and so far as the records show know nothing about it, but it appears from the testimony of the witness Sariol that about a year before his testimony was taken, that is, in March, 1907, he went with one of complainants' counsel, Mr. J. H. Jones, to Cuba to look up these heirs. He never knew any of the present complainants personally. See pages 148 to 152, inclusive, testimony of witness Sariol, and had never met them before. In 1885 the witness Sariol first brought to the attention of persons claiming to be the descendants of Teresa Rodriguez their supposed claim of title to this property. (See page 146 of record). He then claimed to have received powers of attorney from those persons. The persons he met in 1907 when in Cuba with Mr. Jones were an entirely different set of people from the persons he knew personally in 1885, who were all dead. (See page 148 of testimony of Sariol.) He and Mr. Jones only went to Havana and a place near Havana known as Jarueo. They did not examine any of the parish records. (See page 151 of testimony.) He claims to have been connected at one time with Mr. Butt of Orlando in prosecuting this claim. (See page 152 of record.) Witness Sariol

states that he was employed in March, 1907, to help Mr. J. H. Jones, one of complainants' solicitors, in gathering up powers and contracts; that he was to introduce Mr. Jones to parties that he knew as surviving heirs. It is thus apparent that Mr. Sariol with Mr. Jones looked up the complainants in order to obtain such powers of attorney and contracts concerning the alleged claims to this land of the complainants to this suit. (See page 141 of the record.) It appears that the witness has lived in Washington since 1892. (See page 143 of record.) That he was engaged in the brokerage business before he took up prosecuting this class of claims; that he began the investigation or inquiry in reference to the heirs of Teresa Rodriguez in 1885, about a year before he got powers of attorney. (See pages 144 and 145 of record.) He admits that he looked up the heirs himself, (see page 146 of the record) and that he had never known them prior to 1885. It will thus be seen that neither the complainants in this case or the complainants in the former suit or any other persons claiming to be heirs of Teresa Rodriguez ever themselves made claim to this land or took any steps of their own accord to make claim to it, but the witness Sariol in 1885 or 1886 commenced the agitation of this claim and attempted to institute proceedings to claim the title to this land, and in 1907 the complainants' said witness Sariol with one of their solicitors, Mr. J. H. Jones, went to Cuba to look up the present complainants to obtain from them powers and contracts. He only personally had more than casual acquaintance with two of those who claimed to be the first claimants in 1885. (See pages 147, 148 of the record.) None of these persons are now living. (See page 150 of record.) The testimony of Sariol as to pedigree is wholly unreliable and does not establish the pedigree of the present complainants at all, and none of the present complainants testified as to their relationship or claim of relationship to the original claimant Marcos or to Teresa Rodriguez, to whom the Grant was confirmed. He does not claim to have made

any examination of parish records at that time, and those records he claims are still in existence.

The court in this case is called upon now to recognize and establish the claims of complainants and descendants of Teresa Rodriguez, to whom this Grant was confirmed in 1828. It appears from the certificate introduced by complainants that Teresa Rodriguez died in 1850, and that all of her children have been dead for many years. Neither she nor they ever asserted claim of title to the property in question. She had been dead thirty-five years before the witness Sariol stirred up and started this claim on the part of persons living in Cuba to this property. The present claimants seem to have had no knowledge of it and taken no action on it until 1907, fifty-seven years after the death of Teresa Rodriguez, and seventy-nine years after the confirmation of the Grant to Teresa Rodriguez and her children. We submit that it would be very dangerous for a court to undertake at this day and with the character of proof offered here as to the relationship of complainants to M. Marcos, the original Spanish grantee, and Teresa Rodriguez to render a decree in favor of these complainants on the theory that they had definitely and distinctly and certainly proven in this court by competent evidence that they are the heirs and the only heirs at law of M. Marcos and Teresa Rodriguez.

We also submit that even if a court should find after careful scrutiny of the alleged certificates produced that the testimony of the witness Sanchez that certain of the complainants are descendants of M. Marcos and Teresa Rodriguez, there is no proof that they are the only descendants. The certificates do not establish the pedigree of all of these complainants even, and do not establish that they are the only heirs. This effort to establish pedigree at this late date is one of the strongest reasons why the court should dismiss this bill on the grounds of complainants' laches and delay and the laches and delay of their ancestors in asserting claim of title to this land. If the court is in doubt as to their pedigree, it is the duty

of the court under the decisions to dismiss the bill and to compel the complainants to test their claims, if any they have, by an action at law.

COURT'S OPINION AS TO PROOF OF PEDIGREE AND AS TO THE DOCTRINE OF REPRESENTATION.

The district court in its opinion, pages 93, 95 and 96 of the record, holds that the records of births, deaths and marriages kept in accordance with law or by religious associations in accordance with custom is sufficient proof of pedigree, and that copies of such records have been introduced in this case. The court further holds, on page 94, that the allegation of secondary facts stated in such records, where the pedigree is denied, is sufficient, and that a prima facie case is sufficiently shown by the evidence in this case. We submit under the decisions hereinabove quoted that the certificates in this case were not proven or the records from which the same were taken proven by the custodian, nor is their authenticity proven by anyone having sufficient knowledge thereof; that there is no law of Florida authorizing the use of such records. We further submit that the recitals in these records are not evidence for any purpose either to make a prima facie showing of pedigree or for any other purpose, and that the court erred in its opinion and holding that such prima facie showing is made by this evidence. In this suit the answer distinctly demands strict proof of this part of the complainants' case, and being a bill to cancel deeds the complainants' title under such decree must be clearly and distinctly established by the evidence. The court in its opinion, found on pages 95 and 97, in effect admits that the pedigree of only a few of the complainants has been shown even by this incompetent testimony, but holds that the bill may be maintained by them for their benefit and for the benefit of all other heirs, and that it is not necessary in this suit to make all of the heirs parties or to prove the pedigree of all of the heirs, but

that under the doctrine of representation, those whose pedigree is proven are permitted to represent all parties in interest, and that the rights of those not made parties are equally bound by the decree as those who are parties. We submit to the court that this doctrine does not apply to the bill filed for cancellation of deeds by parties complainant claiming title as the heirs of one who is deceased. This character of bill is not one of the bills mentioned in the authorities quoted as coming within this doctrine.

The defendant is entitled in this case to have the question definitely settled as to this title with all who are really the heirs of Theresa Rodriguez, and that they shall be parties to the suit so that all of these questions may be settled in this suit. We submit further that the rights of heirs not made parties to a suit of this character are not bound by the decree, and that this case is in no wise analogous to a creditors or stockholders bill. The reason why creditors of the same class are bound by a decree on a creditors or stockholders bill is that the decree settling the equities provides for a general notice being given for proving the claims by creditors or stockholders in a Master's office. An opportunity is given to prove their claims by all creditors in the Master's office, but in a case like the one at bar, where a bill is filed to cancel deeds, there is no practice by which a cause can be referred to a Master who shall give extended public notice to all persons interested to make proof before him of their claims or be barred by the decree. Therefore, only those persons who are actually parties complainants and actually prove their pedigree in a suit where the answer demands such proof, are bound by the decree in the suit. In case of joint tenants or tenants in common, they must all be parties complainant to a bill in equity in reference to land. This is decided distinctly in reference to a bill filed to cancel deed to land. See following authorities:

In Freeman on Tenancy and Partition, paragraphs 368, 369, the language is as follows:

"If any one of the heirs seek to set aside a deed from ancestor on account of fraud in its procurement, all the heirs must be brought before the court. The deed, if set aside, affects the whole property. The court, therefore, will not act until all persons interested are before it."

See Young vs. Bilderback, 2 Green's Chan., 206. Hardy vs. Handy, 11 Wheat., 103; L. Ed. 6, pages 103, 130.

In 2nd Green's Chancery, 206, 3 N. J. Equity, the court states the rule as follows:

"If a conveyance is set aside or cancelled, the decree will affect the whole property and not a part only. The whole title is before the court and all persons interested in it and on whose rights the decree may operate should be there also."

The district court cites Story's Equity Pleadings, page 107, as sustaining the decree. It will be found, however, that the author in Section 159 on page 166 (10th Ed.) states the further rule as follows:

"Hence it is that one joint tenant cannot ordinarily sue or be sued without joining the other joint tenants. So tenants in common must all sue and be sued in cases attacking their common rights and interest."

So in Section 160, page 168 and notes, the author repeats the rule that all heirs should be made parties or be before the court in all bills filed to set aside a conveyance made by their ancestor, and we think that is the rule that controls the case at bar.

As to suits or cases brought by one person having a common interest with others for the benefit of all who may come in under the bill, these suits are confined to cases where those not before the court have an oppor-

tunity to prove their claims in the same suit by becoming parties, or before a Master who has given notice.

See Story's Equity, Sec. 99 and Notes showing that the defendant is protected by all creditors being required to prove their claims before the Master or be made actual parties to the bill.

See also Beach's Modern Equity Prac., Vol. 2, Sec. 682.

Johnson vs. Waters, 111 U. S., 684, 700; L. Ed. 28, page 555.

None of the bills of this class referred to in Story's Equity Pleadings are bills by the heirs of an ancestor seeking to set aside conveyances purporting to be of the title of the entire property.

WANT OF PROPER PARTIES DEFENDANT.

The amended bill, page 77, shows that a portion of the land involved in this suit was conveyed by tax deed to one M. C. Crumpler in 1887, and another portion of said land to one J. C. Kryce, and another portion of said land to Buffom Land and Trust Company. (See record, page 77.) These parties are not made parties defendant to the bill. The title to the portion of said lands so conveyed to them according to the answer of the defendant, (pages 35 to 49 of the record), is in the said Crumpler, Kryce and said Buffom Land and Trust Company, and no decree of cancellation could be made in this case in favor of complainants as to those portions of the land unless these parties are made defendants. Copies of these tax deeds to Crumpler, Kryce and Buffom Land Company were also filed in evidence, pages 962 and 920 to 922.

Portions of these lands are also included in a tax deed from J. P. Hughey, Clerk, to Henry S. Sanford, dated the 25th of January, 1882 (see page 82 of record), and shown by complainants' amended bill (page 76 of record), and certain tax sale certificates were issued on portions of

said land to one, James E. Ingraham, and assigned by him to said Henry S. Sanford, and a certain tax certificate was issued to Thomas E. Wilson and assigned by him to said Henry S. Sanford. These are all sources of title in the said Henry S. Sanford having no connection with the tax deeds to John Starke made in 1852 or with the tax deed to William Mills in 1872. No proof has been offered to show that these tax sales were not valid. They vest title in Henry S. Sanford to the property, and while said title is outstanding the complainants could not maintain this bill as the owners of the legal title of the property, and the decree in this case could not undertake to cancel these deeds.

If, as we contend, the first tax deed from John Simpson, Sheriff, to John Starke is valid, even if the subsequent deeds were cancelled, this bill could not be maintained without making the said Simpson or his heirs party defendants. It will be noted that the decree in this case does not undertake to cancel the deed from William Mills to George C. Powell, dated the 3d of May, 1872, Exhibit 5, found on page 871 of the record, nor the deeds from George W. Powell and wife to Henry S. Sanford, defendant's Exhibits 6 and 7, pages 874-878 of the record. These deeds are warranty deeds. The decree does not mention the deed from Henry S. Sanford to Trustees of Florida Land and Colonization Company, found on pages 896-898 of the record, which is also a warranty deed. None of the grantors in said deeds are made parties to this suit. The court below had no power to cancel the deeds from John Simpson to John Starke and the deed from Robert C. Partin to William Mills, and the records show that the said Mills had conveyed his claim of title to said George C. Powell, and the said Powell had conveyed his title to Henry S. Sanford, who had conveyed his title to the said Trustees of the Florida Land and Colonization Company.

TITLES HELD BY APPELLANT OTHER THAN UNDER THE DEEDS DECREED TO BE CANCELLED IN THIS CAUSE.

Nearly all of the lands involved in this suit are included in a certain deed from J. P. Hughey, Clerk, to Henry S. Sanford, dated the 25th of January, 1882, see page 882 of record and referred to in complainants' amended bill, page 76 of record. Said Sanford held also under certain tax sale certificates issued on portions of the land, representing purchases at the sales, and which certificates were assigned by the State of Florida to one J. E. Ingraham and to Thomas E. Wilson, and assigned by them to said Sanford. These sales to the State, represented by said certificates, which vested title in the State as well as the said deed from Hughey, Clerk, to Sanford, prevent the appellees from maintaining this bill as the owners of the legal title of this property, and the decree in this case was erroneously entered undertaking to cancel the said deed from John Simpson, Sheriff, to John Starke, and the said deed from Robert C. Partin to William Mills, or any other deeds, at the instance of appellees because the appellees did not have legal title to said property.

LACHES.

The complainants' right to maintain this suit is barred by their laches and delay in bringing it and by their abandonment of the property and their claim of title thereto. The dates of the conveyances sought to be cancelled by the bill in this case are set forth in the statement of the case in this brief. The dates of such conveyances show the long lapse of time since they were made and recorded, and such lapse of time itself was so great as to constitute such laches and delay as bar complainants' right to relief under this bill.

The deed from John Simpson as Sheriff and ex officio Tax Collector of Orange County, Florida, to John Starke

is dated the 5th day of July, 1852, nearly fifty-five years before the filing of this bill, and is recorded the 27th of June, 1855, nearly fifty-two years prior to the filing of this bill. The deed from R. C. Partin as Tax Collector of Orange County to William Mills is dated the 23d of April, 1872, more than thirty-five years before the filing of the bill in this cause, and is recorded the 14th of April, 1872, within a few months of thirty-five years prior to the filing of said bill herein. The said sale sought therein to be declared illegal was made on the 6th of March, 1871, as stated in said deed. The deed from William Mills to George C. Powell was dated the 23d of May, 1872, more than thirty-five years before the filing of said bill herein, and was recorded the fourteenth of October, 1872, within a few months of thirty-five years before the filing of the said bill herein. The deed from George C. Powell to Henry S. Sanford is dated the 27th of October, 1881, more than twenty-five years prior to the filing of said bill herein, and is recorded the second of February, 1884, nearly twenty three years before the filing of said bill herein. The deed from George W. Powell to Henry S. Sanford is dated the 15th of November, 1881, more than twenty-five years before the filing of the bill herein and recorded the second of February, 1884, more than twenty-three years before the filing of the bill herein. The deed from Henry S. Sanford to the Trustees of Florida Land and Colonization Company is dated the 9th of January, 1884, more than twenty-three years before the filing of the bill herein and recorded November 10, 1884, more than twenty-two years before the filing of the bill herein. The deed from Edwin S. Dawes and George A. Thompson as Trustees of the Florida Land and Colonization Company to the said company is dated the 2nd of December, 1899, and recorded in the public records of Lake County, Florida, within a few days thereafter. The deed from the Florida Land and Colonization Company to the defendant, Wilson Cypress Company is dated the 3d of May, 1900, and recorded the 10th of May, 1900. The bill of complaint in this cause was filed the first of May, 1907, but two days

less than seven years from the date of the executing of the deed to this defendant. The deed from J. P. Hughey as Clerk to Henry S. Sanford of this Grant is dated the 25th of January, 1882, more than twenty-five years before the filing of the bill herein, and is recorded on the same date, more than twenty-five years before the filing of the said bill herein. The original Grant from Spain to Miguel Marcos is dated the 18th of December, 1815, and the Board of Commissioners on December 16, 1825, rendered its decision recommending and reporting this Grant of fifty-five hundred acres for confirmation. This Grant was confirmed by Act of Congress, to-wit, Section 1 of the Act of May 23, 1828. (Vol. 4, Statutes at large, page 284.) The first evidence in the record of any action before the General Land Office at Washington by alleged claimants of this Grant is shown by letter of Butt & Silver, attorneys, dated the 29th of June, 1889, acknowledged by the Commissioner of the Land Office in his letter of October 29, 1889, being complainants' Exhibit 5. The Grant was surveyed in January, 1851, by M. A. Williams and approved June 20, 1851, by B. A. Putnam, Surveyor General, as shown by defendant's Exhibit "I." This survey and approval were more than thirty-eight years prior to any action taken in the General Land Office by parties claiming to be owners of the Grant and their attorneys applying for patent for same. This is the survey upon which the patent finally issued June 26th, 1895. The boundaries of the township were run in 1845 by C. C. Tracey, Deputy Surveyor, and the township was first surveyed by Government numbers in December, 1847, by R. W. Norris. This Williams survey of the Grant as approved by B. A. Putnam, Surveyor General June 20, 1851, is shown to have been a part of the United States Surveyor General's office at Tallahassee May 20, 1889, being the date of the certificate of W. D. Bloxham, Surveyor General, to said plat, and a copy of which certificate by W. D. Bloxham, Surveyor General, on May 20, 1889, was on file in the General Land Office at Washington as shown by defendant's Exhibit "1." The letter of W.

H. Milton, Surveyor General, to the Commissioner of the General Land Office, dated June 18, 1894, being complainants' Exhibit "8," refers to a record of this claim as approved by one LeRoy D. Ball, Surveyor General, on the 31st of March, 1880. On the 12th of February, 1894, the Secretary of the Interior made his order that a patent issue, which date is more than thirteen years prior to the filing of the bill herein. On the 26th of June, 1895, patent issued nearly twelve years before the filing of the bill herein. Neither the complainants nor their ancestors themselves ever took any action, as shown by this record, to acquire patent to or claim this property or to recover it at any time. The complainants' witness Sariol evidently first brought the matter to the attention of persons in Cuba who he thought were the heirs of Teresa Rodriguez, and he testifies he obtained powers of attorney from them in 1886 but he abandoned the prosecution of the matter in 1889. None of the persons that the witness Sariol recognized as such heirs in 1886 are complainants to this suit and he testifies such persons are all dead. Certain persons, not present complainants, filed a bill in this court on June 24, 1902, to cancel some of the deeds hereinabove mentioned. This suit was dismissed for want of prosecution on April 4, 1904. The bill alleges that the said suit was dismissed on account of the neglect of counsel of complainants in said bill. The sworn answer in this case alleges and the record in said suit shows that said suit was dismissed on account of the failure of the complainants in said suit to furnish evidence to their then counsel to be used before the Master in establishing complainants' claim, and the default in said matter, on account of which such dismissal occurred, was that of complainants and their ancestors. The principles on which the bar of laches rests are well recognized in courts of equity and have been often declared by the Federal Courts. It has been decided in a number of cases that "only conscience, good faith and reasonable diligence can call a court of equity into activity and that stale demands will not be

aided where the party has slept upon his right and acquiesced for a great length of time."

This doctrine is based upon the ground of public policy, and its aim is the discouragement for the peace and repose of society of stale and and antiquated demands. Some of the elements entered into in bar of laches are the questions of public policy above mentioned and the increase in value of the property, the difficulty of doing substantial justice between the parties at this date, the apparent abandonment of their claims by complainants, the permitting of defendant and those under whom it claims to expend money for taxes, surveys and the care of the property, the failure of complainants to pay any taxes upon the property or to use the property or to make any expenditures thereon, the loss of evidence where, from delay, conclusions of the court must as to important matters involved in the suit be conjectural and the original transactions have become obscure by lapse of time, loss of evidence and death of parties or witnesses—the complainants will by their laches be precluded from relief even if the claim originally was not unjust.

The following cases in the Supreme Court of the United States assert this doctrine of laches as bar to relief in equity:

Kiley vs. McGlynn, 20 Wall., 502.
Mackall vs. Casalier, 157 U. S., 556.
Johnson vs. Standard Mining Co., 148 U. S., 360.
Witsell vs. Minn. R. Transfer Co., 169 U. S., 237.
Willard vs. Wood, 164 U. S., 502.
Moran vs. Horsby, 178 U. S., 285.
Phoenix vs. Packard, 145 U. S., 317.
Gallagher vs. Coldwell, 145 U. S., 368.

Residence of complainants in a remote territory does not excuse laches, neither will failure to prosecute suits

brought by the same complainants or their ancestors but left undetermined.

See

Kiley vs. McGlynn, 20 Wall., 503.
Dow vs. Sampson, 23 Fla., 445, 449 and the authorities there cited.

Negligence or errors of attorneys representing complainants in proceedings in Washington or former suit brought in this court would not excuse laches.

18 Am. & Eng. Enc. of Law, 111.
Ives vs. Sargent, 119 U. S., 652.

Those claiming under Teresa Rodriguez could have filed their bill in equity at any time after confirmation of the Grant May 23, 1828, to cancel any tax titles or clouds on their title.

See

Sloan vs. Sloan, 25 Fla., 53.
Van Wyck vs. Kneaveles, 126 U. S., 101.
Lee vs. Johnson, 116 U. S., 48.
Sampson vs. Smiley, 13 Wall., 91.

Also

Lindsey vs. Howe, 2 Black., 554.
Hughes vs. U. S., 4 Wall., 232.
Rector vs. Gibson, 111 U. S., 276, 289, 290.
Garland vs. Winn, 20 How., 6.

Various periods of time have been held sufficient to bar by laches a complainants' claim in equity, for example, in Richards vs. Mackall, 124 U. S., 183, a period of twelve years delay was sufficient.

In Hannah vs. Moulton, 138 U. S., 486, a period of thirteen years.

In the fifth circuit, thirteen years lapse of time between the dates of tax deeds and the filing of the bill has been held sufficient to bar the right to maintain the bill.

Florida Coast Line Canal and Transportation Co. vs. Ellsworth Land Co., 144 Fed. Rep., 972.

PERIODS OF DELAY LESS THAN STATUTES OF LIMITATIONS MAY CONSTITUTE A DEFENSE OF LACHES AND LAPSE OF TIME IN EQUITY.

See

Metropolitan Bank vs. St. Louis Despatch Co., 149 U. S., 236.
Haywood vs. Eliott National Bank, 96 U. S., 611.
McKnight vs. Taylor, 1 How., 161.
Alsop vs. Ricker, 155 U. S., 440.
Richards vs. Mackall, 124 U. S., 183.

Laches began to run against the ancestors of complainants as soon as the tax deeds were executed, but even if this defense was only available from the date of patent, nearly twelve years existed between the date of the patent in 1895 and the bringing of this suit in May, 1907, and nearly seven years between the date of the deed to defendant, May 3, 1900, to the bringing of this suit, May 1, 1907.

THE LOSS OF EVIDENCE IS ONE OF THE GROUNDS FOR ENFORCING THE DOCTRINE OF LACHES.

It applies in this case in several particulars. Examples of its application are the survey of the Grant made by M. A. Williams in 1851. The record shows that Williams is now dead, and it cannot be shown upon what facts or previous survey he made his location and survey of this Grant or where he located south line of Grant. The south line of the Grant is in dispute, as shown by the evidence. The witness Beardall, who surveyed this Grant for the Florida Land and Colonization Company, from whom defendant purchased, is also dead, and his testimony cannot be taken as to the location of the Grant or the south line thereof. Complainants contend there is no record of the assessment of this Grant for taxes for

the years 1845 to 1852, for nonpayment of which it was sold. These records of Orange County, where the land was situated, were all destroyed. The records in the Comptroller's office, on account of age and use, are in such condition it is impossible to ascertain whether the land was assessed or not.

The increase in value of the property is one of the reasons for enforcing the doctrine of laches. This is shown in testimony of the witness Ingraham, pages 481-482 and the witness Wilson, page 440.

PROPERTY ABANDONED BY TERESA RODRIGUEZ AND THOSE CLAIMING UNDER HER.

The records show that neither the complainants nor those under whom they claim themselves ever took any action personally to recover these lands or to have deeds under which defendant claims cancelled. The bill alleges that in 1890 they employed counsel to obtain a patent to this land. The record shows that somebody's counsel corresponded with the Department in 1889. Those under whom complainants claim took no action and apparently had abandoned the property until the witness Sariol hunted up parties in Cuba whom he claimed to be the heirs in 1885 and commenced the agitation of this claim. He abandoned the prosecution of the claim in 1889, and the present complainants were only brought into this litigation in 1907. The witness Sariol and Mr. J. H. Jones, one of complainants' solicitors, went to Cuba to get powers of attorney and contracts from the present complainants claiming them to be the heirs. Sariol and Mr. Jones apparently had to look up these persons and they claim to have had them identified. Sariol had no acquaintance with any of the present claimants and does not know any of them now personally except as he met them in 1907. It thus appears that none of the persons claiming to be the heirs of Teresa Rodriguez would ever have made claim to this property if it had not been suggested to them by other persons.

From the date of confirmation of the Grant in 1828 to the action taken in the Land Department in Washington in 1889 or 1890, according to the allegations of the bill, the ancestors of complainants lived in Cuba and practically abandoned the land. Neither complainants nor their ancestors ever took any active steps to claim the land prior to 1889 or any steps to take possession except the action of the witness Martin in 1896. Complainants' witness J. P. Owens claims that he went over the land with Martin and looked after the lands for about a year and a half in 1896 or 1897. Owens never lived upon the land and at the time he claims to have been looking after it the Andersons were cutting cedar off the land under permission of the Florida Colonization Company and Thomas or Wofford as agents of the Florida Land and Colonization Company were living upon the land at this time

NEITHER COMPLAINANTS OR THEIR ANCESTORS EVER PAID ANY TAXES UPON THE PROPERTY TO SUPPORT THE GOVERNMENT.

The property was sold for taxes by Simpson as Sheriff and ex officio Tax Collector to Starke, to-wit, in 1852, for the taxes of 1845 to 1851, inclusive. The property was again sold in 1872 for the taxes of 1867, 1868 and 1869 by R. C. Partin as Tax Collector to William Mills, and the testimony of Rand shows that the taxes were paid by Florida Land and Colonization Company from 1882 to 1900, and after 1900 the taxes have been paid continuously by the defendant, Wilson Cypress Company. The failure of the complainants to ever pay any taxes on the property is an evidence of abandonment of their claims and one of the reasons why for public policy a court of equity will not lend its active aid in this suit.

PRESUMPTIONS AFTER LAPSE OF TIME.

AFTER THIS LAPSE OF TIME A COURT OF EQUITY WILL PRESUME THE PROPER EXECUTION AND ACKNOWLEDGMENT OF DEEDS AND WILL PRESUME THE PROPER ASSESSMENT AND OTHER TAX PROCEEDINGS UNDER WHICH THE SALES FOR TAXES WERE MADE, AND WILL PRESUME THAT THE SURVEY BY M. A. WILLIAMS IN 1852 WAS MADE FROM THE PREVIOUS SURVEY OR LOCATION OF THE GRANT BY THE CLAIMANT.

Another effect of the long lapse of time since the transactions occurred which are sought to be investigated in this cause is that a court of equity must presume that officers have properly performed their duties and that documents now found on the record were originally properly executed and acknowledged.

In re Bollman, 4 Cranch, 75.
Van Ness vs. Bank of U. S., 13 Peters, 17.
1st Enc. of Evidence, 872, 873, 875 and notes.

The court will presume that the original deed from Simpson as Sheriff and Tax Collector to Starke had witnesses on it after this lapse of time and that the Clerk omitted to record same.

The court will also presume that this deed from Simpson as Sheriff to Starke was duly acknowledged before the Clerk, the same being now found after fifty years upon the records of Deeds in Orange County, Florida. The certificate to the deed shows that it was duly recorded by the Clerk and the law authorized the Clerk to take the proof of the witnesses for record or the acknowledgment of the grantor, and the fact that the Clerk recorded it

and certifies that he recorded it is equivalent to certifying that it was duly acknowledged or proven for record before entered and the court will so presume.

The court in the absence of positive proof to the contrary will now presume that there was at one time a record of the assessment of this property for taxes for 1845 to 1851, inclusive, upon which the sale from Simpson as Sheriff and Tax Collector to Starke was predicated. If the law required such assessment in writing upon the assessment roll or supplemental assessment, at this late date the court will not find that such assessment was not made but will presume that it was made as practically recited in the deed.

This Grant was separated from the public domain by the terms of the Grant and the description in the Grant. The claimants were required to survey and to locate it, and to furnish such survey and location to the Surveyor General on which he would act in putting it upon the township plat. After the death of Williams and all parties connected with the transaction it will be presumed that the parties had such survey made prior to 1851 and that Williams acted on such previous survey or other information of the description of the Grant as sufficient to identify the property, and, therefore, that it was separated by public survey during the years 1845 to 1851 inclusive. The doctrine of presumptions as matter of evidence will be freely applied by a court of equity where complainants seek to investigate transactions as old as are involved in this cause.

APPELLANT, AS DEFENDANT IN THE COURT BELOW, ENTITLED TO PLEAD AND INSIST UPON LACHES AS A DEFENSE.

The application of the doctrine of laches to a suit may be made by the court itself although it is not pleaded or raised by the defendant, because such doctrine is based upon public policy and upon the difficulties that the court would encounter in settling and determining the rights

of the parties after long lapse of time from the dates of the instruments or transactions involved. In this case, therefore, the court would have the right to consider the application of the doctrine of laches as applied to appellee and those under whom they claim during the whole period of time since the confirmation of the Grant, May 23, 1828.

The defendant, however, in this case has a right to plead and insist upon the application of the doctrine of laches in this cause because it holds title under the deeds sought to be cancelled, to-wit: the deed made in 1852 by the Sheriff and ex-officio Tax Collector and the deed made in 1872, and the defendant, therefore, has every right that the grantee in those deeds and the several deeds following to assert laches as a defense. In the case at bar, in order for the court to determine the questions as to the taxable character of the land and the title by adverse possession by the various grantees named in the deed sought to be cancelled, the court is required to investigate the pedigree of appellees, the status of the parties from the time the Grant was confirmed, the surveys of the land, and the acts of the parties or their failure to act. The doctrine of laches runs through the whole subject matter of this litigation and in order to determine the questions in the case the evidence must be examined by the court covering the transaction from 1828.

LACHES AND THE STATUTE OF LIMITATIONS AFTER ISSUE OF PATENT.

All of the argument of appellees that the doctrine of laches should not be applied in this case refers to a period prior to 1895 when the patent issued from the United States. We insist under the authorities cited in our original brief that the doctrine of laches and Statute of Limitations should be applied in this case as to defendants and those under whom they claim. By reason of their failure to act or delay in acting prior to 1895, the complainants below, who are the appellees here, are barred by laches and delay and Statute of Limitations.

As we have heretofore stated, the patent was obtained in 1895 and no action taken by the appellees in reference to the deeds complained of in this suit until they, or some of them, filed a bill in 1902 to cancel said deeds, and which bill was dismissed for want of prosecution, as stated and set forth in answer of appellant to the bill and as argued in our original bill. Nearly twelve years elapsed between the date of the patent and the filing of the bill in the present cause. This period of time is sufficient to bar the appellees both under the doctrine of laches and under the doctrine of the statutes of limitations applicable to such suits in the State of Florida.

APPELLEES ALLEGE IN THEIR BILL THE TAX DEED FROM JOHN SIMPSON, SHERIFF, TO JOHN STARKE HAS NO SUBSCRIBING WITNESSES, AND WAS NEVER ACKNOWLEDGED OR APPROVED FOR RECORD.

The court below did not pass upon this objection to the deed but based its decree upon the ground that the land was not subject to taxation, but if such objection were now considered, it is not well taken. The laws of Florida then in force did not require subscribing witnesses to said deed.

See Thompsons' Digest, Laws of Fla., Section 1, page 177, copy of which is appended to this brief.

Subscribing witnesses to a deed were not required at common law.

1st Delvin on Deeds, Sec. 255.

(a) There is no evidence that the original deed did not have subscribing witnesses.

(b) It will be presumed after this lapse of time that the original had subscribing witnesses and by error the deed was not properly recorded.

(c) It is to be presumed that the original deed was

acknowledged before the Clerk for record before it was put upon the record, particularly after this lapse of time.

1st Enc. of Ev. 872, 873, 875 and notes.

(d) Even if the paper from John Simpson as Sheriff and ex officio Tax Collector to Starke had no witnesses, and had not been acknowledged, it would not be ordered cancelled because it is an admission in writing by the then Sheriff of receipt of the purchase money from Starke for the property and rate to him and under the law Starke or his grantees would be entitled to deed from the succeeding sheriff reciting the said sale.

Day vs. Adams, 43 Ver., 510.

Vt. etc. Co. vs. Windham, 44 Ver., 489.

(e) The said paper from Simpson, Sheriff, to Starke vested in Starke at least an equitable claim to a title which would authorize the assessment of the property to Starke in 1867 and 1869, as was done.

Under the laws of Florida in force at the time that this deed was made by Simpson, Sheriff and Tax Collector, the succeeding sheriff would be authorized to execute a deed to the purchaser based upon the imperfect deed of his predecessor acknowledging the sale and receipt of the purchase money by the sheriff. The tax deed can be made by the succeeding officer. See the following authorities:

2 Blackwell on Tax Titles, Sec. 754.

3 Devlin on Deeds, Secs. 1411, 1412, 1413, 1414.

Thompson's Digest Laws of Florida, page 329, Sec. 4 Subdivision 2. (Copy appended.)

See also

Section 1682 Gen. Stats. State of Fla. now in force. (Copy appended.)

The testimony of Royal, page 310 of defendant's testimony, shows that it was recognized that this property after its purchase by Starke was known as his. Starke at least had an equitable claim to a title which would authorize the subsequent assessment of the property in his name.

OBJECTIONS MADE BY APPELLEES AS TO DEED DATED APRIL 23, 1872, FROM ROBERT C. PARTIN, TAX COLLECTOR FOR ORANGE COUNTY TO WILLIAM MILLS FOR UNPAID TAXES 1867, 1868, 1869.

The court in its decree found and decreed that this Grant during said years 1867, 1868 and 1869 was not subject to taxation. We have already discussed this subject fully and shown that it was subject to taxation.

The lands were properly assessed to John Starke who had a deed for same from John Simpson as Sheriff above mentioned.

There is no evidence that John Simpson was not in possession of the land, and it will be presumed after this lapse of time that the assessor did his duty and assessed it to John Simpson as being in possession of same.

The bill alleges the lands were described by section numbers 9 to 16 and 1 to 24.

The land covered by this Grant appears to have been twice surveyed, once by Norris in December, 1847, as public lands, and by Williams as private Grant in 1851, and these assessments for the years 1867, 1868 and 1869 were apparently made by sections according to the Norris survey:

Copy of Norris survey attached to the bill of complaint, marked Exhibit "D."

The deed from Robert C. Partin as Tax Collector for Orange County to William Mills describes the land not only by section numbers but also as known as the Grant of Teresa Rodriguez. The plat of Township 19 South, Range 28 East and Township 19 South, Range 29 East, Defendant's Exhibit "1" in this case shows the Grant according to the survey made by M. A. Williams. This plat compared with the plat of the Norris survey, Exhibit "D" to the bill of complaint, would show the numbers of Sections 1, 2, 3, 4, 5, 8, 17, 20, 21, 22, 23 and 24 covered by the Grant and mentioned in the deed from Robert C. Partin as Tax Collector to William Mills.

THE APPELLEES ALLEGE IN THEIR BILL THAT PARTIN, TAX COLLECTOR, HAD NO AUTHORITY OF LAW TO MAKE A DEED; THAT THE DEED SHOULD BE MADE BY THE COUNTY CLERK.

(a) The said deed from Robert C. Partin as Tax Collector to said Mills was written evidence and acknowledgment by the tax collector that the said Mills was the purchaser at said sale for taxes, and said paper vested in said Mills an equitable interest in said land and a right to said deed of said property from an officer authorized by law to execute said deed based on such purchase, and, therefore, a court of equity would not cancel the said instrument.

(b) This instrument may be treated as a certificate of sale of the property by the Tax Collector to said Mills.

(c) The answer alleged that the said instrument was good as an evidence of said equitable title or interest of the said Mills and no exceptions were filed to that portion of the answer.

(d) Robert C. Partin as Tax Collector was authorized to issue a certificate of sale to the purchaser, and even if it were necessary to obtain a tax deed from the Clerk the purchaser is entitled to have such tax deed made by a subsequent Clerk, and mandamus would lie to compel the Clerk to make such deed. There is no evidence that the said Mills did not go into possession of the property under this deed, and there is evidence that he sold and conveyed the land to George C. Powell mentioned in the record. This deed from Partin as Tax Collector to Mills would be good as a written acknowledgment of the purchase by Mills and would vest in him an equitable title or a right to a title.

THE APPELLEES ALLEGE THAT THE LANDS WERE NOT ASSESSED FOR TAXES IN THE YEARS 1845 TO 1851, INCLUSIVE, BUT WE INSIST THAT AT THIS DATE THERE IS A CONCLUSIVE PRESUMPTION OF THE ASSESSMENT OF THIS PROPERTY FOR THE YEARS 1845 TO 1851, INCLUSIVE:

(a) The testimony of W. M. McIntosh, Chief Clerk in the Comptroller's Office, with copies of what purport to be portions of the tax books of these years for Orange County, Florida, shows that the books were in many instances in very imperfect condition—in some instances worn and partly destroyed. His evidence also shows that he had no knowledge of whether or not there had been any additional tax books or supplements to these books filed during the said years with which he was not familiar. His acquaintance with the books had only been within the last twenty years.

(b) Entries referred to on the books in reference to grants may have been intended to cover the grant in question. Under these circumstances the Grant would be presumed to have been correctly assessed for these years and the assessment now lost or destroyed.

See pages 155 to 195 inc. of record.

Under the provisions of the tax law in force at that time, to-wit, Subdivision 4 of Section 4, page 97, Thompson's Digest, the Sheriff was authorized to sell this land, upon a return made to him by the Assessor of lands where the owner is unknown or no one in charge of same, and does not seem to require an assessment. This return to the sheriff is evidently in the nature of an execution to authorize the sale of lands where there has not been return for taxation and the owners are unknown. Such lands would not necessarily appear upon the tax rolls.

Under this provision of the tax law in force from 1845 to 1852 inclusive, a return must have been made by the

assessor to the sheriff authorizing the sheriff to levy upon this land. Such return would be in the nature of an execution. This provision is evidently inserted in the law for the purpose of enabling the sheriff to sell lands where the owner was unknown and no one in charge of the lands and no return had been made by the owner to the assessor of the lands for taxation. The law does not seem to require such return by the assessor to the sheriff of this class of lands to be placed upon the assessment rolls, and that accounts for this assessment possibly not appearing upon the assessment roll.

Thompson's Digest, Sub-division 4, Sec. 4.
(Copy appended.)

APPELLEES AND THEIR ANCESTORS, AFTER THE CONFIRMATION OF THE GRANT, MAY 23, 1828, WERE ENTITLED TO TAKE POSSESSION OF THESE LANDS, AND THE ACT OF CONGRESS OF MARCH 3, 1807, PROHIBITING THE TAKING POSSESSION OF UNCONFIRMED GRANTS DOES NOT APPLY.

The history of this Act shows that it applied to Grants under Louisiana Purchase. The Acts of Congress applicable to the Florida Grants, in effect, authorize the grantees to take possession, particularly for the purpose of surveying and locating the Grants themselves.

See Sec. 12 of Act of Feb. 8, 1827, Vol. 4 Statutes at large, page 202
Sec. 1 of Act of May 23, 1828, Vol. 4, Statutes at large, page 284.
Sec. 7 of Act of March 7, 1829.
Also see Sec. 2, Act of March 3, 1823; Vol. 3, Statutes at large, page 754.

The Act of March 3, 1807, which appellees contend prevented them or those under whom they claim from taking possession, was passed on the same date on which an Act was passed for ascertaining titles and claims to lands within the territory of Orleans and Louisiana. Under this last mentioned Act, the surveys were to be made by the Surveyor General, and there is no provision for the claimants making surveys and locations themselves.

See also Act of March 26, 1804, Vol. 2 Statutes at large, page 283, in reference to Grants under the Louisiana Purchase.

The Act of March 3, 1807, referred to by appellees in their bill, being Sec. 476, Revised Statutes U. S., was passed in reference to the Louisiana Purchase, and was nearly fourteen years prior to the ceding of Florida to the United States. This Act refers only to Grants which had not been confirmed. While this Act is by Sec. 9 of the Act of March 30, 1822 extended to Florida, the subsequent Acts of Congress with reference to Grants in Florida have reference to providing for the exercise of certain rights of possession by grantees of such Spanish Grants. This Grant was recognized and confirmed by Act of Congress of May 3, 1828. After the passage of the Act of February 8th, 1827, Section 12 which required the claimants to cause the Grants to be connected with the township lines, and certainly after the confirmation of the Grant by Act of Congress of May 23, 1828, the Acts of Congress prohibiting the taking possession of unconfirmed Grants had no application. This Act of Congress evidently refers to Grants prior to their confirmation, to-wit, while the same were being examined by the Commissioners. The Act does not refer to Grants of perfect title. The titles under these Grants were made perfect by the treaty between the United States and Spain.

See U. S. vs. Percheman, 7 Peters, 82, Book 8 L. Ed. 616.

After the survey by Williams in 1851 and its approval, as shown by defendant's Exhibit "1," to-wit, on the 20th of June, 1851, there could be no question that the Grant was fully recognized, and complainants or those under whom they claim had every right to possession of same.

APPELLEES BARRED BY ADVERSE POSSESSION OF APPELLANT AND THOSE UNDER WHOM IT CLAIMED.

The defendant insists in this case that this suit should not be entertained because it was in possession of the lands in question at the time the bill was filed and that no relief can be granted upon such bill while it, the defendant, is in possession of the lands in controversy.

The defendant further insists that it has title to the property under the statutes of Florida by more than seven years of adverse possession under color of title by it and by those under whom it claims.

See Secs. 1718 to 1722, inclusive, General Statutes of Fla., copy of which is appended to this brief.

The evidence in this case establishes that from about the date of the deed from William Mills to George C. Powell, to-wit, May 3, 1872, until the 27th of October, 1881, the date of the deed from George C. Powell and wife to Henry S. Sanford and for a short time thereafter George C. Powell was in actual possession of this entire grant, except Section 9, and that George C. Powell and George W. Powell were in possession of that part of the Grant. The witnesses for defendant whose testimony was taken for it in reference to the possession of the land by George C. Powell and the acts of possession asserted by him are to the entire Grant and make a complete case of adverse possession from 1872 to 1882. The evidence shows that George C. Powell and his son in law William Slade and his son George W. Powell and his son in law W. P. Lassiter moved on to this Grant early in 1872. They each built small houses upon the land and

George C. Powell and George W. Powell lived on the ground during all of this period of time. Lassiter lived upon the Grant for a part of the time and Slade lived upon the Grant a part of the time. George C. Powell and his sons in law built a mill and mill dam on this Grant in 1872, and it was operated by George C. Powell and by his son in law William Slade and by George W. Powell and one Mitchell and by L. J. Owens, all claiming under George C. Powell, up to the time the property was sold by Powell to Sanford in 1882. This was a saw mill and grist mill and cotton gin. George C. Powell had two different houses on the Grant. His son in law Lassiter had a small place and he and George W. Powell lived on the Grant. His son in law William Slade lived for a time on the Grant. These persons lived on the land and cut logs and other timber used in the mill off the various portions of the Grant, the pine timber off of the western part of the Grant in Sections 16 and 9, particularly, and some cypress for making shingles from the eastern part of the Grant in the swamp. There were small cultivations around the lands occupied by George C. Powell and George W. Powell. They planted orange trees and vegetables and some other crops. They took the material to make fences from off of the Grant, and George C. Powell sold the cedar from the Grant to one White who cut it while George C. Powell was in possession. The horses and oxen belonging to Powell and Slade were raised upon this Grant. The cedar was cut from all over the Grant. The witness Royal and one Owens purchased cypress taken from this Grant from which they manufactured shingles. Cedar and other hard wood were cut out of the swamps by Slade and other persons claiming under Powell. The fence rails were taken largely from the 16th Section. They also took fuel from the Grant. The pine timber taken by Slade while he operated the mill was off the 16th, 9th and 10th Sections of this Grant. It will thus be seen that George C. Powell and those claiming under him from 1872 to 1882 had actual possession of the Grant and exercised actual ownership over the entire Grant.

See testimony of following witnesses: Lassiter, pages 235 to 248 of record; Slade, pages 262 to 288 inc. of record; L. J. Owens, pages 289 to 293 and 325 to 344, 391 to 414; Robert Rose, pages 293 to 309; Alonzo Royal, 309 to 326; Griggs, pages 379 to 384; Ivey Royal, pages 413 to 423 inclusive; Henry B. Anderson, 457 to 480; Ben Anderson, 426 to 435; F. H. Wilson, 434 to 447; J. E. Ingraham, 481 to 488.

This Grant was a well known single tract of land and marked by exterior lines around the entire Grant and was known as the Powell Grant from 1872 to 1882 and no one was in possession of same or claimed same at that time except Powell and those claiming under him. See testimony of above witnesses.

George C. Powell and George W. Powell made sales and conveyances of portions of the Grant and the timber on the Grant and also placed mortgages on the property on record as shown by defendant's Exhibit 6 to 25 inclusive.

Henry S. Sanford acquired title to the property by deeds from G. C. Powell and G. W. Powell and from J. P. Hughey, Clerk, the deeds from the Powells being dated in October and November of 1881. The originals of all these deeds are in evidence. At the time Sanford acquired possession, Mr. J. E. Ingraham, his agent, went upon the Grant and took possession of it and met Powell there who showed him the improvements and the lines of the property. The improvements were a saw mill and orange grove and the small dwellings of his sons. He employed a man to look after the mill and the grove and had the fruit shipped from the grove to the store. Also had the lands surveyed by William Beardall. See pages 481 to 488, inclusive, of the record, also Beardall's deposition, page 954, Rand's testimony on pages 248 to 263, Slade, 269, 270; Owens, 328, 329, 331, 332.

Sanford conveyed the property to the Trustees of the Florida Land and Colonization Company by deed dated the 9th of January, 1884. Ingraham was agent of the company for a short time and then E. R. Trafford was

their agent in charge of their property. Along in 1889 F. H. Rand became their agent and held possession as Trustee for the company or agent for the company until 1900 when the land was sold by the Florida Land and Colonization Company to defendant. See testimony of Ingraham, pages 481 to 488 and testimony of following witnesses, F. H. Rand, pages 248 to 262 inclusive. Rand was the agent of the company from 1887 succeeding E. R. Trafford who is now dead. This company through Rand and Beardall as agent of the company had various employees or agents under them on the land and in charge and possession of it for this company as follows: one Jones was on the Grant, and he and one Thomas were put on there shortly after the survey of the Grant by Beardall. Jones and Rand were there from 1887 to 1892. See Rand's testimony, pages 248 to 262; Slade, pages 269, 270.

Thomas as agent was living upon the property and in charge of it, certainly from 1887 to 1894, and probably between 1884 and 1887 when Trafford and Beardall were agents. See deposition of Beardall stating the company had him survey the land and the company cultivated the grove until the freeze, so that between 1884 and 1887 when Royal became agent, Trafford and Beardall evidently had some one in possession of the property for the company between the purchase from Sanford and 1887 when Rand took charge. Witness Owens testified that Thomas went on the Grant within a month after the survey by Beardall, pages 329, 330. So that Thomas probably was in charge of the land under Trafford and Beardall prior to 1887 and down to about 1894. The following witnesses show the possession by Thomas: Rand, page 250; Slade, pages 269, 270; Owens, 329, 330; Rose, pages 298, 299; Alonzo Royal, 314; Wofford, 345; J. W. Boykin, 364; C. C. Boykin, 385; Ben Anderson, page 427; H. B. Anderson, page 460.

After Thomas, a man by the name of Fig appears to have been on the land in charge of it for the company for a few months. See testimony of C. C. Boykin, 385; L. J. Owens, 334.

After Fig left the property one McIntosh was in charge of the property for the Florida Land and Colonization Company. See testimony of J. W. Boykin, 366; C. C. Boykin, 385, 386; L. J. Owen, 331; Slade, 270; Rose, 299; Royal, 314.

C. C. Boykin succeeded McIntosh as agent and was there for about two years. This was some time prior to 1894. See testimony of C. C. Boykin, 384; J. W. Boykin, 366; Rand, 250; Rose, 299; Royal, 318; Owens, 334.

John Wofford was in possession living on the Grant as agent of the company from about 1894 or 1895 up to 1900 when the Grant was sold by the Florida Land and Colonization Company to Wilson Cypress Company and for about a year after the latter company bought it. See the following testimony: Wofford, 345; Rand, 250; Slade, 270; Rose, 299; Royal, 318; Owen, 335; J. W. Boykin, 369; C. C. Boykin, 389. Each of these agents resided upon the Grant. Thomas resided first in the house formerly occupied by G. C. Powell and afterwards had a house and some cultivation made by himself on the Grant. Wofford had three places on the Grant; McIntosh resided in a small house near the south boundary of the Grant; Charlie Boykin lived in the same house; Wofford had some cultivation around two of the places occupied by him and kept hogs on the Grant. He was on the Grant in 1899 when the witness Slade left that part of the country.

AGENTS OF WILSON CYPRESS COMPANY IN THE POSSESSION OF THE GRANT.

John Wofford was the agent of the Florida Land and Colonization Company in 1900 when the Wilson Cypress Company purchased the property and he continued there for about a year after. See testimony of Wofford, 346; L. J. Owens, 337; C. C. Boykin, 366; J. W. Boykin, 366. L. J. Owens succeeded Wofford in charge of the land as defendant. See testimony of L. J. Owens, 337, 338; J. W. Boykin, 367; J. W. Boykin took charge of the land in

1904, and is still in charge and possession of same as agent of the defendant. See J. W. Boykin, 367; L. J. Owens, 338, 339; Royal, 318; C. C. Boykin, 386, 387. The testimony in substance as to possession of these agents is that Jones was on there with Thomas and probably for a while prior. Thomas had two residences at different times on the Grant, he lived on the Grant, cultivated a small garden, had entire charge of same, and it was while he was on the Grant that the Andersons obtained cedar, timber and palmetto upon the Grant under permission from the Florida Land and Colonization Company.

McIntosh lived with his family in a cottage on the south side of the Grant and had possession and charge of same. Charlie Boykin lived in a small cottage and had possession and charge of the said Grant. The duties of these men were to hold possession and to prevent trespasses on the Grant and to live on it. The same is true of Fig. John Wofford had an actual possession on three different places on the land. See testimony of Owens, and Wofford. He had some cultivation of the land and kept hogs on the Grant. He had actual possession and lived on the Grant and in various parts of it, in the north, center and southeastern part of it and was there until some time in 1901. L. J. Owens followed Wofford as agent for defendant in charge of the Grant and lived near the Grant and posted his notices on the Grant as the property of defendant. He had charge for about three years before J. W. Boykin took charge. No one else was in possession during any of this time except the agents of the defendant and of the Florida Land and Colonization Company. Each of these witnesses testified to this fact. J. W. Boykin took charge in 1904. He built a cabin on the Grant where he spent part of his time and rode over the Grant every two or three days or two or three times a week and kept trespassers off the Grant and held possession of it. He also posted notices on this property as the property of defendant, Wilson Cypress Company. The possession of Thomas was for more than seven years and he actually lived upon the ground.

The possession of Wofford was from 1894 to 1901 and he actually lived upon the Grant and cultivated portions of it. The witnesses Owen, Slade, Wofford and J. W. Boykin located parts of the Grant where Thomas and Wofford lived.

The timber and cabbage palmetto was taken from this Grant by at least three persons under permission of the Florida Land and Colonization Company. See testimony of Rand, 250, 251. Deposition of Beardall, 955, testimony of Royal, 315; Owens, 349; Andersons, 428, 429, 462. The cedar was cut on the east side of the Grant by the Royals and the Andersons cut mostly from the north side and center part of the Grant. The Andersons cut the cedar all over the land but the most of it from the north side or the center of the land. The Andersons also took cabbage palmetto from the land about 1890 and 1891. These were taken mostly from the east part of the Grant from the east end and south side.

It thus appears that from 1872 to 1882 G. C. Powell and his son and sons in law and those operating immediately under them had actual possession of the Grant and exercised actual acts of ownership and possession of the Grant and all over the Grant. From 1882 to 1884 when Sanford held title to the Grant, he and his agents had charge of it and exercised actual possession and ownership over it. From 1884 to 1887 Trafford was the agent of the Florida Land and Colonization Company. He and Beardall had charge of the Grant and exercised possession over it, as shown by the testimony of Beardall and Rand. From 1887 after Rand became the agent the testimony is clear to the actual possession and control of the Grant by the Florida Land and Colonization Company through various agents on the Grant down to 1900 when it was purchased by the present defendant. Since 1900 the defendant has had persons in charge of the Grant.

This Grant was a well known single tract and possession of part was possession of all.

Kendricks vs. Latham, 25 Fla., 819, 834, 835.
Munroe vs. Merchant, 28 N. Y., 1.

THIS CHARACTER OF POSSESSION OF TIMBER LANDS BY AGENTS IS HELD SUFFICIENT TO CONSTITUTE ADVERSE POSSESSION.

See Sloan vs. Sloan, 25 Fla., 53.
Munroe vs. Merchant, 28 N. Y., 1.
Lessee of Ewing vs. Burnet, 11 Peters, 41, 52, 53.
Russell vs. Butler Co., 93 Fed., 304.
Bradley vs. West, 60 Mo., 60.
Bartlett vs. Draper, 23 Mo., 407.
Howett vs. Johnson, 48 Ill., 69.

LOCATION OF HOUSE OCCUPIED BY AGENTS OF DEFENDANT NORTH OF SOUTH LINE OF GRANT.

There is dispute, as shown by the evidence between complainants and defendant as to the location of the house built by defendant on the Grant and occupied by its agent, J. W. Boykin. The complainants insist that it is located south of the true south line of the Grant and not on the said Grant, and defendant insists that it is located within the Grant and north of the south line thereof. A great deal of testimony was taken upon this point, both that of witnesses for complainants and for defendant. The line was run and surveyed by the witnesses, Fries, Beasley and Ginn, on the part of complainants, and witnesses Moorehead, Howard and Owens on the part of defendant, and the witness Robinson, for complainants, testified that he had also made a survey of said south line of this Grant. The witnesses for defendant locate this house about sixty-three feet north of the south line of the Grant. The witnesses for complainants locate this house a few feet south of the south line of the Grant as measured by them. The witnesses for defendant, who testified on this point, are Howard, pages 574, 627, 785, 788, W. A. Morehead, pages 628 and 683, inclusive, L. J. Owen, 682, 719, 798 to 821. These witnesses located the southwest corner of the Grant

by a post marked "XR" at this corner and by the distances measured north and then east to the northwest corner of Section 21 in the same township. This is shown by plat, defendant's exhibit 38, page 1030 of record. And they found a plain old blazed line running east from this southwest corner post. They also located this southwest corner of the Grant by its distance from other corners mentioned in the field notes. The trees on this old blazed line, as found and located by defendant's witnesses, were of old growth and blazes were apparently very old. This old blazed line was followed to a pond and to a spring mentioned in the field notes. These Surveyors, in order to locate this line, located the northeast and southeast corners of Section 21, and also located the northwest corner of Section 21, at which a post was found marked with the figures 21 and other figures, and certain bearing trees were found there and on west line of the Grant. In other words, while the south line of the Grant as located by defendant's witnesses is, according to distance, further south than the distance called for in the field notes, it corresponds with the monuments and natural objects called for by the field notes, namely, the southwest corner of the Grant, as located by them, is marked by a post; the south line as run by them is an old blazed government line, and it crosses the pond and the spring as stated and described in the field notes.

The southwest corner of the Grant, as located by complainants' witnesses, has no post marking it. The measurements used by defendant's witnesses from the said stake found by them at the southwest corner of the Grant and through said pond and spring, natural objects mentioned in the field notes, and on said blazed line claimed by defendant, conform approximately with the distances given in the field notes. The only point relied upon by complainants' witnesses with reference to the line asserted by them to be the south line of the Grant are the distances measured north and south as called for in the field notes, and not the location of corner posts or natural objects or by a very old blazed line. The witness for

defendant, L. J. Owen, who made the survey with defendant's witnesses Howard and Moorehead, had known this Grant since 1880, when he ran a mill owned by George C. Powell. See page 292 of record. The defendant's witnesses insist there are no other old marks or blazed line between the south line of this Grant, as located by the witnesses, and the north line of said Section 21 within the Grant, other than the line located by them as the south line of the Grant. The timber along the line was old growth. The southwest corner post of the Grant as located by them had old marks upon it. The blazes along this old line appear to be made a great many years ago. These witnesses also located some of the corners of Section 20 and the northwest corner of Section 21 and located the pond and spring as called for by the field notes from these corners, and the line located by them as the south line of the Grant crosses the point at about the distance given by the field notes. We, therefore, insist that after this long lapse of time, where apparently an old blazed government line existed as the south line of the Grant, that it should be recognized, particularly where the measurements from natural objects called for by the field notes, locate and verify this as the correct line. It appears, according to the testimony of the witnesses for the defendant, Morehead, Allen and Owen, that the house occupied by the defendant's agent is sixty-three feet north of this old blazed Grant line which corresponds with the corner stake at the southwest corner of the Grant and by measurements with the corners of Sections 20 and 21, as found by these witnesses, and this line is also identified by the blazes on the trees and by its locations with the pond and spring called for in the field notes, although it is located further south than the distance called for in the field notes from the northeast corner of Section 21 to the said south line of the Grant, and which distance is evidently a mistake, and in locating this line now, would yield to these monuments and natural objects and old blazed line found on the Grant.

The original sworn bill of complaint in this case filed

by complainants May 1, 1907, alleged "that the defendant at some time after the date of said alleged deed (referring to deed to defendant) built on said Rodriguez Grant a cabin and has employed an agent, to watch said property and keep the timber which covers said land from being stolen;" that subsequently the complainants filed an unsworn amendment to said bill of complaint maintaining Paragraph 31 of the original bill and omitting the said statement as to said cabin built by defendant. It is proved that at the time of the filing of the bill, complainants and their solicitors had the same information and opinion as to location of the south line of this Grant entertained by defendant and its agents, and that the cabin built by it was on the Grant. This was an admission by complainants made in a sworn bill. The bill prays among other relief for an injunction restraining and prohibiting the defendant from claiming under the deeds sought to be cancelled. The amended bill is not sworn to and this admission if the original bill stands as a part of the record in this case is an admission of fact, made by complainants in the bill. This is particularly important in view of the dispute between the surveyors as to the location of the said cabin and whether or not it is inside of the Grant or just outside of the south line of the Grant.

THE FOLLOWING FACTS ESTABLISH THE CORRECTNESS OF THE LOCATION OF THE SOUTH LINE OF THE GRANT AS TESTIFIED TO BY DEFENDANT'S WITNESSES AND CLAIMED BY DEFENDANT.

They found the southwest corner stake at the point described in their testimony. This stake is called for by the field notes. Pages 583, 584, 585, 586, 602, 633, 634, 651, 677, 678, 685, 686. See defendant's Exhibit 38, page 1031, and Grant Field Notes, 851, 852-3-4.

They found the large stump hole where the bearing tree had been, called for by the field notes. Record, pages 586, 609, 622, 712.

They found a line leading east from the said corner stake which line was evidently a very old blazed line. Record, pages 586, 587, 646, 647, 648, 691, 692, 693, 708, 709.

This line though about four chains further south than the field notes called for, more nearly corresponded with the field notes in every particular as to natural objects, than the line claimed by the complainants. Record, pages 587, 700, 701.

First it crosses a certain grass pond at about but not quite the distance given by the field notes. The evidence shows that this pond lies in a northeast and southwesterly direction—so that although the distance thereto on defendant's line from said stake, is a little greater than that in the field notes yet, necessarily, a line where complainants claim it should be, must vary from the field notes to a still greater extent, because of said pond lying northeasterly and southeasterly. Record, pages 587, 588, 602, 614, 712, 713.

Ginn admits this. Record, pages 763, 764.

The same observation as to the Sulphur Spring run may here be noted, and in this connection we will first request attention to a peculiar expression in said notes. The field notes state that the south grant line crosses the east line of Section 21 in edge of Spring *branch;* they then state that said south line after crossing said east line runs a certain distance to spring *run*, and it is here indicated that the maker had some different meaning for the words *Branch* and *Run*, and this question is of importance in locating said south line as will be seen from the following facts:

The line claimed as south line by said defendant crosses said east line of Twenty-one in the edge of the bank of the spring. The Sulphur Spring is in a sink hole or indentation in the earth. A run or creek emanates therefrom taking a meandering course in a general northeasterly direction. Record, pages 587, 603, 604, 614, 615.

Defendants south line crosses said run at about the distance called for by the field notes, but since said run

takes off easterly as it goes north, a line three or four chains north of defendant's south line, as for instance Complainants' line, will touch said run at a distance varying still more greatly from the field notes. 614, 615, 616, 625, 626, 645, 703, 704, 715.

Now going back to the Spring, there is no other creek or run or branch than the one above mentioned, leading from said spring. How then could the south line of grant cross the east line of 21 in edge of Spring Branch?

It crosses in or very near the brink of a depression in which the spring and run lie. The government surveyor called the depression the Branch and the water itself in the creek at the bottom of the depression the *Run*.

The line therefore crosses east line of Sec. 21 in the edge of *Spring Branch* then continues east to the *Run*. Record 603, 604, 616, 624, 764. Defendant's exhibit 38, page 1031 of Record.

COMMENTS ON THE TESTIMONY OF THE SURVEYORS.

No witness of Complainants denies that the post located by defendant's surveyor is where defendant claims it is, 9.35 South of the North section line of 21.

No witness of Complainants asserts or ventures the surmise that the post has been moved:

No witness of Complainants denies that there is a line of old blazes from said stake East, as stated by defendant's witnesses.

No witness of Complainants denies the correctness of the measurements made by defendant's surveyors from said stake to the grass-pond mentioned in the field notes.

No witness of complainants has denied the correctness of the measurement of defendant's surveyors from said pond to the East line of section twenty-one.

No witness of Complainants has denied the correctness of defendant's surveyor's measurement from said East line of section twenty-one to the sulphur-spring run.

No witness of Complainants has denied that the said

blazed line claimed by defendant as South Grant Line intersects the East line of Section 21 in the edge of a depression or "sink," which is an indentation in the earth in which is situated the sulphur spring and spring run mentioned in the field notes. The field notes evidently refer to the edge of the spring branch as the edge of this indentation and refer to the spring run as the water or creek or stream itself emanating from said spring, because there is but one stream from said spring and no signs of any other ever having been there.

All of said measurements from said stake and from said natural objects on said blazed line claimed by defendant conform approximately with the distances given in the field notes. Ginn admits this as to the pond, spring branch and run. Record, pages 763, 764, 765, 766, 767.

None of that is denied, but it is denied by Complainant that that is the South Boundary line of the Grant.

On the contrary the complainants claim that the real South line is about four chains North of the line claimed by defendant.

The field notes call for the said South line 5.35 chains South of the North line of Section 21, which said section overlaps into said grant and complainants claim that said line is there located. Yet it will be seen from the testimony of both sides that the distances called for by the field notes are not exactly correct on the ground in any instance—see sketch of survey by defendant's witnesses. The length of section lines of Sec. 21 is not correct. The distance from N. W. corner Sec. 21 to West boundary line of Grant is not correct, etc. Record, pages 588, 589, 596, 597, 612, 625, 680, 691, 707, 708.

The defendant claims that it does not matter that the field notes give the distance as 5.35 as above stated, because in fact the line was laid at about 9.40 chains south of said north line of Section 21. And in proof thereof relies upon the fact that the line which defendant claims conforms to the natural objects of the field notes and very closely to distances except the said 5.35, and furthermore relies on the corner stake and ancient blazed lines.

Now let us examine the lines claimed by the complainants as at 5.35 South of said line of Section 21.

Beginning at the West end thereof where the corner stake should be according to the field notes—no stake is found; this is testified to by defendant's witnesses and admitted by complainants' witnesses; complainants never produced a witness who had ever seen any other stake at corner than the one located and claimed by defendant, nor who stated it has ever been anywhere else. There is no bearing tree nor any trace thereof to indicate the location of the corner as called for by the field notes at the point claimed by the complainants as the section corner of the grant This is stated by surveyors' testimony of both sides. It will be here observed that Messrs. Robinson and Beasley, the first surveyors who testified in this case for complainants never mentioned a stake or bearing tree, never mentioned a blazed line at all on their line at 5.35. But later Beasley and Ginn, to off-set the fact that defendant had an ancient line, found blazes on their 5.35 line. Defendant's surveyors say that those blazes are only ten or fifteen years old. Complainants' surveyors do not deny the age of defendant's blazes, but claim theirs are just as old. See Grant Field Notes and Field Notes to Sec. 21, pages 851, 852, 853, 854 and Defendant's exhibit 38, page 1031 of Record.

The attempt to use the Drawdy and Cashen Grants or patents is not permissible because the *field notes* of same are not put in evidence and it is not shown by field notes where those lands should be, with relation to the grant lines, actually on the ground. Record, pages 744, 746, 747.

The evidence of Beasley as to where he located the Drawdy homestead is inadmissible, because he did not prove that his survey was correct by showing and producing the field notes he used as to where the said lands should be located. This is required by the *best evidence Rule*. Record, pages 744-747, inclusive.

COMMENTS ON THE TESTIMONY OF THE COMPLAINANTS' INDIVIDUAL SURVEYORS.

Fries' testimony is in effect that he located the South line according to field notes. Record, pages 552 to 557 inclusive.

Yet Beasley and Ginn admit that they could not locate the Southwest corner stake nor the bearing tree, both called for by the field notes. It is also shown by the evidence that complainants' witnesses could not locate edge of Spring Branch at the intersection of their alleged south Grant line with the East Line of Section twenty-one—yet Fries and Robinson making no exception or qualification, state broadly that they located the line according to the field notes.

They did not find a blazed line there at the point they claimed as the South Grant line—for they *utterly failed to mention it.*

It will be noted at once that the witness Robinson persistently uses the expression that he located the South line "where it ought to be according to the field notes." Undoubtedly he meant that the line he located was "in his opinion" where the South line *ought to be*—but not where it *was actually on the ground.* 557, 558, 561 of Record.

When he said where the South line *ought to be according to the field notes*—he meant according to that distance of 5.35 chains south of the north line of Section 21. Record, pages 557, 558, 560.

Robinson, being pressed, upon cross-examination admits reluctantly that he is testifying entirely upon memory and does not give figures, but merely found everything according to field notes. 563, 564, 565 of Record.

Robinson's memory of his survey was not sufficient to be of value as his cross examination shows. Record, pages 564, 565.

Fries does not mention a bearing tree—does not mention a blaze—does not give a detail of his survey—does not state how he proceeded or what instrument he used—does not mention a natural object on the grant line he claimed

—does not mention a corner stake at southwest corner of the Grant—does not make any statement of any value to inform this Court of anything except his conclusions. Record, pages 552 to 557 inclusive.

His statement referring to the cabin near bottom page 30 of testimony taken February 11, 1911, as follows:

It is located 8 chains 14 links south of section line and therefore south of the Grant line as described in the United States Field notes.

Shows that he reaches that conclusion merely by reference to the distance 5.35 chains called for by the notes and not by actual survey of the lines on the ground. Record, page 554.

Beasley, the second time he testified, is unable to give his measurements in most instances and refers to Ginn who kept the figures and notes. Yet Ginn's testimony shows that he could not give accurate figures and dealt only in approximate terms. Record, pages 730 to 739 inclusive, 764, 765, 766.

PAYMENT OF TAXES BY DEFENDANT AND THOSE UNDER WHOM IT CLAIMS TITLE.

The witness Rand with the tax receipt produced by him establishes the payment of the taxes on this land by him as the agent of the Florida Colonization Company from 1887 until 1900, (see pages 252 to 253). The witness Wilson, Secretary of defendant company, with tax receipts produced by him establishes the payment of the taxes on this land by the Wilson Cypress Company since 1900, (see page 438, 439). There is no evidence in this case that the complainant ever paid any taxes on the land or had any real occupation of the property or made any improvements upon it. The complainants will not be permitted to contend that this property should not bear any part of the expense of the Government where the Grant had been duly confirmed and was identified by the terms of the Grant or identified by location made by

claimants of the Grant as required by law, and certainly by the Williams survey.

Under the statutes of Florida the complainants are not entitled to a decree cancelling the titles of defendant without a repayment of the taxes which have been paid out by it and its predecessors. The decree of the District Court did not provide for this.

See Section 592, General Statutes of Fla., copy appended to this brief.

DEFENSES OF THE STATUTES OF LIMITATION UNDER THE LAWS OF FLORIDA.

The defendant and those under whom it claims title have been in possession of the Grant claiming under written instrument for more than seven years prior to the filing of the bill herein. Under Section 1718 and 1721 of the General Statutes if this bill is treated as an action for the recovery of real property or of possession thereof it must appear that the party was seized or possessed of the premises within seven years before the commencement of the action and the possession of the premises was held to be adverse where they continued occupation and possession for seven years. In this case there was a continual actual occupation by George C. Powell from 1872 to 1882 and by the agents of the Florida Land and Colonization Company from at least 1887 to 1900, their agents residing on the land. Either of those periods of adverse possession would bar the complainants' right to recover this property if this is an action for the recovery of real property. Copies of these Sections of General Statutes of Florida are appended to this brief.

Under Section 1719 Gen. Stats. of Fla., it must appear that the complainants or those under whom they claim are seized or possessed of the premises in question within seven years before the accruing of the right of action as defenses. This suit was brought twelve years after the issuing of patent under which complainants claim and

eleven years after Martin claims to have gone upon the land to take possession for the grantees under the patent. J. P. Owens whom he claims to have made his agent does not in his evidence mention that he even overlooked the lands after 1897 but he left that part of the country so that for ten years before the filing of the bill neither the complainants nor those under whom they claim had any pretense of possession of this property. Copy of said Section is appended to this brief.

The defendant Wilson Cypress Company after 1900 had actual possession of the land for more than a year through J. W. Wofford who is living on the land, and then by having it in charge of their agents L. J. Owens and J. W. Boykin, who lived near to the land, kept trespassers off of it, posted it and had it in possession to the extent that timber lands may be held and possessed when not used for cultivation. The statutes of Florida in describing adverse possession, Section 1721, Gen. Stats., describes such possession where the property is used for the ordinary use of the occupant, or where a known tract has been partly improved, the balance is, according to the usual custom of the country, deemed to have been occupied for the same length of time as the part improved or cultivated. This defendant's occupancy consists in holding timber lands through its agents without actually residing on it, according to the course and custom of the country. This is the only possession that such lands are really capable of. The witness Boykin, however, resided a part of each week in a cabin on the lands, and the Grant being a single tract of land enclosed by exterior boundaries as such, he would be held to have possession of the balance of it.

This being a bill in equity to cancel deed is not an action for the recovery of real property or for the recovery of possession under the statutes of limitation but is an action within the meaning of the said statutes and comes within subdivision 4 of Section 1725, Gen. Stats. Fla., providing for a bar within four years of any action for relief not specifically provided for in said chapter. It has been held by the Supreme Court of Florida in case

of Branch vs. Cole, 18 Fla., 368, that this Section applies to a bill in equity for dower. The court in that case stated that the statutes of limitation of February 27, 1872, was passed while the code was in effect, and, therefore, is intended to cover suits in equity which would be regarded as actions for relief under the code. Under this authority bills in equity that did not seek recovery of the property or possession thereof would be barred within four years under the above mentioned provisions of Section 1725 General Statutes of Florida. Copy of said Section is appended to this brief.

This provision of the statutes of limitation was in addition to the defenses of laches which is in equity a distinct and separate defense and only follows the statutes of limitations by way of analogy.

Special limitations have been provided by the laws of Florida in reference to suits to set aside tax titles. Under Section 20 of the Act of 1872, Chapter 1887, suit to set aside tax title must be brought within one year after the recording of the deed in the county where the lands lie. The same provision is found in Section 63 of the Act of 1874, Chapter 1976, and of each of the Revenue Acts down to the Act of 1879, Chapter 3099, Sec. 61, Laws of Florida. In this Act the limitation is made three years. Copies of said Sections are appended to this brief.

PROCEEDINGS LAND DEPARTMENT IN REFERENCE TO THIS GRANT.

As hereinbefore stated, this Grant was confirmed in all respects by an Act of Congress of May 23d, 1828, and no patent was required under that Act to complete the title in the grantee. The first evidence of any action in reference to this by the persons claiming under Teresa Rodriguez as her heirs is found in the ruling of the Land Commissioners, dated October 29th, 1889, pages 84 and 85 of record. Thereafter, an appeal appears to have been taken to the Secretary of the Interior. See page 847 of record. In November, 1894, this ruling was re-

versed by the Secretary of the Interior. See page 18 of record, and on the 26th of June, A. D. 1895, patent issued from the United States. See pages 841, 842 and 843 of record. This patent in terms is only a relinquishment of title on the part of the United States. On May 28th, 1889, W. D. Bloxham, Surveyor General of Florida, transmitted to the General Land Office the survey of this Grant made in January, 1851, by M. A. Williams and approved the 20th of June, 1851, by B. A. Putnam, Surveyor General, defendant's exhibit 14, page 1027, and certificate, 1028. During all of this time from the confirmation of the Grant by Act of Congress, May 23, 1828, certainly since the said survey of the Grant and approval thereof in 1851, Teresa Rodriguez and those claiming under her appear to have taken no action in the Land Department in Washington in reference to said Grant, and none before 1889, as shown by correspondence above mentioned. The Secretary of the Interior by his final order on appeal in February, 1894, held that the first section of the Act of Congress of May 23, 1828, confirmed this Grant, and that the grantees had title to the entire area of acreage contained in the Grant. Under this ruling of the Secretary patent issued, by reason of which complainants claim title to this land. This final ruling of the appellate tribunal controls. Where a right of appeal existed from the ruling of the Commissioner of the Land Office to the Secretary of Interior, such appeal must have been prosecuted and the final determination of the question had by the Secretary. No action has ever been taken by the United States or anyone else to question this finding or ruling by the Secretary of the Interior. The effect of this ruling clearly is that the Grant conveyed to Teresa Rodriguez and her heirs the complete title to the property by the terms of the Grant, and certainly under the confirmation by Section 1 of the Act of Congress of May 23, 1828, in reference to Florida land claims. Therefore, the mere fact that some claim was attempted to be asserted by subordinate officials of the Land Department of the United States never

did affect the title in the eye of the law in and to this land. From the date of the confirmation by Congress of the Grant, it is plain that the title was in the grantee. No patent was necessary to vest the title, and the property was clearly subject to taxation. The court below in its final decree (see page 97 of record) decided that these assessments having been made prior to the issuance of patent and while the validity of the Grant was denied by the United States, through its duly organized Land Department, that the tax deeds were void. The court in its opinion, pages 91 and 92 of record, holds that the Department did not recognize the Grant as confirmed until the issue of the patent, and, therefore, that the land was not subject to taxation. We submit that this is an erroneous construction of the law bearing upon this case. The mere fact that a mistake was made by the subordinate officials of the Department as finally determined by the Secretary of the Interior in reference to the true construction of this Grant and the Act of Congress bearing thereon did not and could not in law change the title or affect the title. The title as finally determined by the Secretary was in Teresa Rodriguez and her heirs from the date of the confirmation by Act of Congress of May 23, 1828. No holdings by the Land Department prior to February, 1894, the date of the Secretary's ruling, would affect the title to the property in law or render it not subject to taxation. Whether or not this land was subject to taxation by the State of Florida from the date of its organization as a State in 1845 depended upon whether Teresa Rodriguez and her heirs had title to the land under the Grant as confirmed and not upon the erroneous rulings, if any, made in the Land Department. This is a vital error in the opinion or decree of the court in this case. The same reasoning applies to the attempted conveying of part of this Grant by the United States to the State of Florida, and which was reconveyed by the Trustees of the Internal Improvement Fund of the State of Florida to the United States. (See page 835 of record.) All of these actions were simply errors

in the Land Department. When the land was assessed for taxes by the State of Florida, it was the duty of Teresa Rodriguez or those claiming under her to either recognize that assessment and to have paid the taxes or to have filed their bill and to have enjoined sale for taxes, or after such sale and deed thereon, to have filed their bill to cancel same in the courts, and thereby tested in the courts whether the lands were subject to taxation or not. It was further their duty to have prosecuted proceedings in the Land Department immediately after the survey of 1851, if they deemed it necessary to obtain any recognition of their title by the Land Department in Washington or patent thereon, but they did not pay any taxes to the State of Florida and permitted these lands to be sold for taxes of 1845 to 1851, inclusive, and again in 1872 for the taxes of 1867, 1868 and 1869. They took no action in the court to test their title and rights, and they took no action in the Land Department until 1889, as shown by these records from the Land Department. It cannot under these circumstances be held that because erroneous rulings were made in the Land Department about the title that the lands were not subject to taxation and no title passed under these tax sales or that Teresa Rodriguez and those claiming under her were justified in waiting this great number of years down to 1889 before endeavoring to obtain any ruling in reference to this Grant. Such, however, is the effect of the opinion and decision of the court below in this case, and, we submit, is clearly erroneous. No reason is shown in the record why the same final ruling of the Secretary of the Interior as to this Grant would not have been made at any time after May 23, 1828, the date of the confirmation of the Grant, if the claimants thereof had prosecuted proceedings in the Land Department in reference to said Grant to a final hearing, and it is plain, therefore that such claimants were not justified in law in delaying the commencing of such proceedings until October, 1889, and thus only obtaining this ruling on February 18th, 1894. The final ruling of the appellate tribunal must control,

and is in this case declaratory that Teresa Rodriguez and those claiming under her had title to this land, certainly from the 23d of May, 1828.

As to the effect of the ruling of an appellate tribunal see

Roberts vs. Lewis, 153 U. S., 367.
Colham Gold Mining Co. vs. Ojax Co., 182 U. S., 499.

Where a right of appeal existed from the ruling of the Commissioner of the Land Office to the Secretary of the Interior, such appeal must have been prosecuted and a final decision of the questions obtained from the Secretary before parties claiming under Teresa Rodriguez would be authorized to contend that the title under the Grant was not complete after the confirmation made by the Act of Congress of May 23d, 1828.

For the effect of the ruling of the Secretary of Interior see:

Knight vs. U. S. Land Assn., 142 U. S., 161, 216.
McGuire vs. Tyler, 1 Black., 195.
Buena Vista vs. Iowa, 112 U. S., 165.
Williams vs. U. S., 138 U. S., 514.
Lee vs. Johnson, 116 U. S., 48.

The Secretary of Interior's ruling and final order in this case is simply a declaratory statement of meaning and effect of terms used in the Act of Congress in reference to this Grant, and such effect and term existed at the time the Act was passed and at every period thereafter. No action has ever been taken by the United States or anyone else to question this final ruling of the Secretary of the Interior in this case. Complainants claim under the confirmation of the Grant by Act of Congress of May 23, 1828, and under this ruling of the Secretary of the Interior construing said Act of Congress. The patent of Teresa Rodriguez relied upon by complainants recited the confirmation of the Grant by the first Section

of the Act of May 23, 1828. The complainants claim under this confirmation of the Grant and the patent of Teresa Rodriguez recites said confirmation, and therefore, complainants are estopped from contesting the fact that the Grant was confirmed by Section 1 of the Act of Congress of May 23, 1828, and as they took title under that confirmation and under the said ruling of the Secretary of the Interior, neither would be subject to review at the instance of complainants in this case. The Grant was confirmed by Section 1 of the Act of Congress of May 23, 1828, and it is, therefore, immaterial when the ruling of the Secretary of the Interior was made to that effect. So far as the questions involved in this case are concerned as to the Grant being subject to taxation and the complainants being barred by laches and the statutes of limitations and the adverse possession of defendant and those under whom it claims, the court in its opinion and decree in the court below erroneously holds that the land is not subject to taxation on account of these subsequent proceedings in the Land Department, and further holds that by reason of said proceedings that the occupation and possession of defendant and those under whom it claims title is not valid and the statutes of limitations do not apply, and that no title could be acquired by adverse possession. See pages 92, 99 and 100 of the record for court's opinion as to laches. The court below in its opinion, found on pages 92 and 93 of the record, holds that laches does not apply where the parties have been and are making every reasonable and diligent effort to ascertain and enforce their right, and efforts that have been made by the owners and holders of patents prevent the bar of laches during the length of time that has elapsed. We submit to the court that the Grant was confirmed by Act of Congress of May 23, 1828, and no effort appears to have been made by Teresa Rodriguez or those claiming under her, as shown by this record, until 1889 in reference to taking action in the Land Department as to this claim. All the tax deeds and sales that are attacked in this case accrued prior to 1889. No reason

existed why Teresa Rodriguez or those claiming under her should not have taken action in reference to this claim prior to 1889, or action in the courts to cancel these tax deeds and sales at any time after same was made, as shown by the authorities hereinabove recited. It is, therefore, apparent that the parties claiming under this Grant were not diligent in endeavoring to protect their rights or to test the validity of these tax sales and tax deeds, and the bar of laches plainly apply to same. It further appears that even from the date of the order of the Secretary of the Interior in 1894 or from the date of the patent in 1895 up to May 1, 1907, when this bill was filed, that a period of twelve or thirteen years had elapsed, and only two days less than seven years had elapsed from the time the deed to defendant was made until the bill in this cause was filed. All of the periods of time between the dates of the transactions sought to be contested in this case and the date of the filing of the bill are such that the doctrine of laches distinctly applies to this case. The court further states in its opinion that defendant was shown to have had ample notice of the existence of the efforts of the complainants to obtain this patent before it was issued. We submit to this court that this is a mistake. The only evidence on this point is that of the witness Martin, whose deposition in reference to this matter is found on pages 827 and 832, and certain letters, pages 833 and 834. The witness Martin does not in this deposition pretend to have had any dealing with the defendant. He states, on page 827, he had some little correspondence with Mr. Wilson, but does not state what Wilson, or what connection, if any, he had with defendant, nor is there any proof of same. He states, on page 82, that he had some correspondence with Mr. Wilson, but did not regard them as dealings; that he took Mr. Wilson to be the head of the company from the character of some conversation. The first of these letters is found on page 33 and is dated February 20, 1896. The patent in this case to Teresa Rodriguez, under which complainants claim title, is dated the 26th of June, 1895, and re-

corded January 7th, 1896. See page 92 of record. There is therefore, no evidence in this record that the defendant had any notice of any efforts of complainants, or anyone else, to obtain confirmation of the Grant. Mr. Henry Wilson, named in this correspondence, appears to have discovered some months after the issue of this patent and its record in the Land Office and after its record in the printed records of Lake County, Florida, that said patent had been issued to Teresa Rodriguez and those claiming under her. The second letter of Mr. Wilson, page 84 of record, is dated February 10, 1898. From both of these letters it is apparent that Mr. Henry S. Wilson is seeking to buy the property himself, and nothing is said in said letters or in the deposition of Martin to show any action by the defendant company in connection with the said Martin, or any notice to the defendant company of any claims of complainants or of persons claiming under Teresa Rodriguez. Mr. Wilson had precisely the same notice that every one else had from the record of the patent already issued and recorded. If it were true that the defendant company had notice prior to the issue of the patent that the complainants or those under whom they claim were seeking to obtain a patent from the United States, it would not in any way affect the application of the doctrine of laches to this case. The laches had occurred long before Mr. Wilson ever heard of the Grant or of any claims thereto. There is also no proof in this record that Mr. Wilson ever represented the defendant or communicated these matters to the defendant or its officers. Even if he was shown to be an officer, the knowledge of one officer is not the knowledge of the company.

1 Morowitz Corporations, Sec. 540, B. & C., page 5134, Note 1.
Waynesville Bank vs. Irons, 8 Fed. Rep., page 1.

By reason of the effect of the doctrine of laches and the effect of the statutes of limitations, complainants could not have maintained any suit against the persons or corporations under whom defendant claims title. The

title to those under whom defendant claims had been settled as between them and these complainants long before the defendant bought the property in favor of the persons from whom defendant purchased. In other words, complainants could not have maintained a bill against either defendant or those under whom defendant claims, on account of laches, delay and the statutes of limitations which had accrued prior to the issue of the patent.

The District Court also refers to a suit brought in 1904 and dismissed on account of alleged unavoidable matters. The answer of the defendant in this case states that that case was dismissed by reason of the failure of the complainants, or those under whom they claim, to furnish their then counsel with the evidence on which to prosecute the claim. As we have heretofore shown in this brief, the permitting it to be dismissed does not avoid the effect of the doctrine of laches. If it was the fault of complainants and those under whom they claim, or their counsel, that that suit was dismissed, the bringing of that suit is of no effect to excuse laches, and is only a further evidence of the abandonment of the claim by complainants themselves in not furnishing the evidence to their counsel to prosecute the suit. See pages 1031-1034 of the record in reference to the dismissal of this suit. We submit that the District Court erred in its opinion and in its decree in thus holding that on account of any circumstances in this case the laches and delay and abandonment would not bar the right of complainants to maintain this bill.

THE DOCTRINE OF ESTOPPEL AS APPLIED TO APPELLEES.

In this case, the appellees claim title to the lands in question under a patent from the United States, which is founded upon the Grant from Spain to Miguel Marcos, and confirmation of that Grant by Congress by the Act of May 23, 1828. Teresa Rodriguez, under whom appellees claim, asserted before the Commissioners appoint-

ed to examine these Grants in Florida that this was a valid Spanish Grant. The Commissioners reported favorably the Grant as a valid and unconditional Grant. Congress, by the Act of May 23, 1828, confirmed it as such Grant. Appellees and those under whom they claim asserted before the Land Department from 1889 to the date of said patent that this was a valid Spanish Grant and that it was confirmed by the Act of 1828 and that it had been surveyed by M. A. Williams in 1851. On the basis of these claims and assertions, made before these tribunals, the patent was issued, and appellees now claim to have title to the land, and such title was procured upon these claims and representations made by those under whom appellees claim. The appellees now seek in this suit to claim and contend that according to the true unit of measure, to-wit: the Spanish *Vara*, this Grant contained more than a league square and was not a confirmed Grant by the Act of May 23, 1828, and, therefore, that it was not subject to taxation. The appellees also contend and claim in this suit and in the brief of their counsel in this case that the Grant was a conditional Grant, dependent upon subsequent occupation and a survey and the issuing of some further muniment of title by the Spanish Government. These positions taken by appellees and those under whom they claim before the Land Commissioners and in the Land Department in reference to this Grant, and on which they obtained their patent, are entirely inconsistent with the contentions of appellees and their counsel in this cause in reference to the taxable character of the property. These parties will not be permitted to assume such antagonistic positions before the various tribunals where this grant is in question. If the appellees were entitled to a patent to this land as a confirmed Grant, the land was clearly subject to taxation. Appellees cannot be allowed in a court to assert, on the one hand, that the land is not subject to taxation because it was a conditional Grant and because it exceeded 4,438-.68 acres, and at the same time to assert in the Land Department that it was a complete Grant confirmed by the

Act of Congress of May 23, 1828 and surveyed in 1851, and upon such contentions to obtain this patent from the United States. These positions are absolutely contradictory.

Appellees are estopped by taking benefits under decision that Grant was confirmed by Act of Congress of May 23, 1828, and by having themselves, or those under whom they claim, taken that position before Land Department to obtain the patent.

The Maricopa & Phoenix R. C. vs. Arizona, 156 U. S. 347, 349.
Daniels vs. Turney, 102 U. S., 415.
Gibson vs. Lyon, 115 U. S., 439.
Davis vs. Wakelee, 156 U. S., 680.
Michels vs. Armsted, 157 U. S., 198.

The appellees are estopped to change the position taken by them or those under whom they claim before the Commissioners to settle land claims and before the Interior Department of the United States as to the character of this Grant and to take inconsistent positions in this cause in order to sustain their contention that the Grant was not subject to taxation. Appellees are not permitted to assume inconsistent positions in proceedings in the courts in reference to the same property or to the same questions of title.

See above authorities.

APPELLEES BOUND BY RECITALS IN THE PATENT UNDER WHICH THEY CLAIM PATENT FROM THE UNITED STATES TO TERESA RODRIGUEZ AND HER HEIRS AND ASSIGNS,
(found on pages 839 to 843, inclusive, of the record.)

This patent recites the claim as reported as Claim No. 22 in Report No. 3 of Private Land Claims in East Florida, dated December 31, 1825. Copy of said Claim No. 22 and Report No. 3 is found on page 969 of the

record. Under the head "Conditions of this Grant" in said report, it is stated that there are "none," and the claim is reported as valid. The patent further recites that this claim was confirmed not to exceed a league square by the Act of Congress approved 23rd of May, 1828. The patent further recites that the description is taken from the "approved field notes of the survey thereof as executed by M. A. Williams, the Deputy Surveyor, in the month of January, 1851, under his contract with Benjamin A. Putnam, Surveyor General of Florida, of the 19th of October, 1850." Then follows the description of the Williams survey. A copy of this survey and plat is found on page 1027 of the record and is shown to have been examined and compared with field notes and approved the 20th of June, 1851, by B. A. Putnam, Surveyor General. The certified copy in the record, page 1027, was dated May 28, 1889, signed by W. D. Bloxham, Surveyor General, as then being a part of the files of said office, and is also certified by the Commissioner of the General Land Office by certificate dated March 19, 1901. See page 1028 showing that the same was then at that date a part of the official records of the Land Department. This patent, therefore, adopts the Grant as a Grant reported as valid by the Commissioners and as approved by the Act of Congress of May 23, 1828, and adopts the survey of M. A. Williams made in January, 1851. These appellees cannot claim title under the patent based on this Grant and its confirmation and this survey as recited in the Grant, and also claim that it was a conditional Grant and the conditions had not been complied with and it was not a confirmed Grant because it exceeded a league square. Appellees are bound by the confirmation of the Grant effected by the Act of 1828, and it is established that this was a valid unconditional Grant and was a confirmed Grant certainly since May 23, 1828.

As to Effect of Recitals under Patent.

U. S. vs. Reading, 18 How., 1.
Marsh vs. Brooks, 8 How., 223.
Bigelow on Estoppel, 5 Ed., 371, 374, 375.

OPINION OF SECRETARY OF INTERIOR UNDER WHICH PATENT ISSUED.

We attach to this brief a copy of opinion of the Secretary of the Interior in reference to confirmation of this Land Grant, dated February 12, 1894. This opinion and ruling would have been obtained by appellees or those under whom they claim many years prior to 1894 if they had prosecuted their claim with diligence, and they are not justified in delaying commencing these proceedings until 1889 and only obtaining this ruling in February, 1894. The decision of the Secretary of the Interior was in reference to what was intended by Congress by the term used in the Act of May 23, 1828, to-wit, "a league square" and by what measure Congress intended that such league square should be ascertained. The Secretary of the Interior in his opinion refers to numerous instances and authorities where the *arpen* or *arpent* was held to be the unit of measure for Spanish Grants in 1815 when this Grant was made, and in 1828 when this Act of Congress was passed, and that by this unit of measure a league square contained 6002.50 acres. The Secretary cites authorities showing that a Grant of land in Louisiana of a league square contains 6002.50 acres determined by the French unit of measure, the arpen, and he quotes James & Dennis Quinnilty, 1 Land Decision, 275; also testimony of Walker Gilbert, Maxfield Ludlow, Mr. Briggs et al in the claim of Gabriel Winter et al, American State Papers, pages 260, 261; also the case of Cummyns vs. Latimer, 2 Fla., 71, of a Grant in West Florida, which was measured by an arpent; also White's New Recopilacion, Vol. 2, p. 376, and he holds that in the Spanish possessions of Louisiana and West Florida the French *arpen* or *arpent*, not the Spanish *vara* controlled in the measuring of land, also cites White's New Recopilacion, Vol. 2, page 261, setting forth a letter from Estrado, the Spanish Governor of East Florida, dated July 29, 1811, in which he speaks of a Grant measured by acres according to the English Statute measure which was then usual in the province, and that Florida Grants were reduced from

acres to arpens, citing White's New Recopilacion, Vol. 2, page 378, and on authority and principle he determines that a league square, as understood by Congress at the time of the passage of the Act of May 23, 1828, contained 6002.50 acres. The Secretary further holds that the *vara* as a unit of measure was not considered or known to Congress in dealing with Spanish Land Grants until after the acquisition of California and New Mexico. So that the idea that a Grant of a league square contained 4438.68 acres was not known or the practice in 1828 when the Act of Congress was passed, and the decision should rest upon what was understood to be a league square at that time. In any event, as we have hereinafter stated, the appellees in this case asserted this same contention before the Land Department and obtained benefits under this decision, to-wit, that the Grant was confirmed by the Act of May 23, 1828, and it is so recited in the patent under which they claim, and they cannot, in order to have the land escape taxation, assert in this cause a different and contrary doctrine or claim. The Secretary in this opinion which is dated February 12th, 1894, orders this Grant patented according to the then survey which was the Williams survey made in 1851 and approved in 1851. This opinion and order are *prior* to the alleged approval of the survey by Milton, Surveyor General, dated June 18th, 1894.

We submit that the decree of the District Judge, appealed from to the United States Circuit Court of Appeals for the Fifth Circuit, found on pages 97 to 102 of the Record, was erroneous, and that the judgment of the United States Circuit Court of Appeals for the Fifth Circuit affirming said decree, found on pages 1039-1040 of the Record, is erroneous, and that the said decree and judgment should be reversed.

John C. Cooper

Solicitor for Appellant.

219850
B.
M. F. H.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE

WASHINGTON, D. C., Sept. 9, 1909.

I HEREBY CERTIFY that the annexed copy is a true and literal exemplification of the original in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

H. W. SANFORD,
Recorder of the General Land Office.

(SEAL UNITED STATES
GENERAL LAND OFFICE.)

Vol. 15, No. 341. J. I. P.
J. I. H.

M. L. 219850 E. S. B. B.
February 12, 1894.

PRIVATE LAND CLAIM of TERESA RODRIQUEZ. } FLORIDA SPANISH LAND GRANT.

The Commissioner of the
General Land Office,

Sir:

On April 3, 1890, your office rendered a decision, in the matter of the above entitled claim, declining to issue a patent thereon, for the reason, as stated, that the same had never been confirmed. An appeal by the heirs of Teresa Rodriguez brings the matter to this Department.

The lands within the limits of this grant have been surveyed in Twp. 19 S. Rs. 28 and 29 E., in Florida. The claim was presented to the Board of Land Commissioners in Florida for 5500 acres, and contains, according to
86.46
said survey, 5426.82 acres.

Briefly stated, the history of this grant is as follows:

On October 18, 1815, one Miguel Marcos, first sergeant and sub-lieutenant by brevet of the First Corps, Royal Artillery, detached to the city of St. Augustine, petitioned Estrado, the then Spanish Governor of Florida, to grant him "in absolute property" 5500 acres of land, which was vacant, on the two banks of a creek, which comes from the west and discharges itself into the river St. John, about two miles to the north of a lake known as "Long Lake" and the mouth of said creek, called "Big Spring."

The petition was based on the military and public services of the petitioner, especially during the rebel-

lion of 1812, and the further ground that he was married and charged with children.

On the same day the petition was presented, viz: October 18, 1815, Estrado issued the following decree with reference thereto:

> "Let there be granted to the interested, on the terms which he solicits, the lands indicated in this memorial, in virtue of the several royal orders, which authorize to that effect; and that he may be able to prove this concession in any event, let the necessary certificate be delivered to him from the Secretary's office.
>
> (Signed) Estrado."

On December 1, 1823, Teresa Rodriguez, widow of the petitioner and grantee, presented said claim to the Board of Land Commissioners created by law to ascertain claims and titles to land in Florida.

On December 16, 1825, said Board rendered the following decree:

> The Board having ascertained that the foregoing is a valid concession for the 5500 acres of land made to Miguel Marcos, do therefore recommend it to Congress for confirmation, and said claim was on the same day reported to Congress for confirmation.

All of the proceedings herein referred to are found at page 471, of Vol. 4 of Green's American State Papers. In the petition for confirmation of said claim, filed before the Board of Land Commissioners, by the widow of Marcos, it was stated that the claim had never been surveyed. No survey was, in fact, made until 1850, when the number of acres contained therein was *shown to be as above stated.*

The matter was brought to the attention of your office by the urgent insistence of the widow and heirs of Mar-

cos, for the issuance of patent on said grant, which resulted in your office decision of April 3, 1890.

It was urged before your office by the grant claimants, that said grant was confirmed by the first section of the act of May 23, 1828 (4 Stat. 284) the argument being that the grant contains a less quantity than a "league square."

The construction placed on said first section by your office is, that the "league therein mentioned must be understood to mean a Spanish league, and that a league square by that measurement would contain 4438.68 English acres; that as this claim has been surveyed so as to include 5426.82 acres, which was in excess of a Spanish league by 988.14 acres, it did not come within the confirmatory provisions of section one of the act of May 23, 1828, *supra*.

The provisions of that section are as follows—

> That the three claims to land in the district of West Florida, contained in the report of the Commissioners, and numbered four (4), eight (8), and ten (10), excluding from the latter the land contained in certificate, and in the plats A. and C. and the claims contained in the reports of the commissioners of East Florida, and in the reports of the receiver and register, acting as such, made in pursuance of the several acts of Congress providing for the settlement of private land claims in Florida, and recommended for confirmation by said commissioners, and by the register and receiver, be, and the same are hereby, confirmed to the extent of the quantity contained in one league square, to be located by the claimants, or their agents, within the limits of such claims or surveys filed, as aforesaid, before the said commissioners or receiver and register, which location shall be made within the bounds of

> the original grant, in quantities of not less than one section, and to be bounded by sectional lines.

In connection with the section quoted, should be considered the second section, which provides as follows:

> That no more than the quantity of acres contained in a league square, shall be confirmed within the bounds of any grant; and no confirmation shall be effectual until all the parties in interest, under the original grant, shall file with the register and receiver of the district where the grant may be situated, a full and final release of all claim to the residue contained in the grant; and where there shall be any minors incapable of acting within said territory of Florida, a relinquishment by the legal guardian shall be sufficient; and thereafter the excess in said grants, respectively shall be liable to be sold as other public lands of the United States.

The question involved turns very largely upon the construction of the sections quoted, with reference to the meaning of the expression a "league square."

Another question which presents itself, and which for convenience is here stated, is, that the sixth section of the act of May 23, 1828, *supra*, provides that all claims to land within the Territory of Florida, for a greater amount than that confirmed by the sections quoted, shall, on the petition of the claimant, be received and adjudicated by the Judge of the Supreme Court of the district in which the land lies. And section 12 of said act provides, that any such claim not brought before said court by the claimant within one year from the passage of said act, and if so brought, shall not be finally disposed of, on account of the delay of the claimant, within two years, shall be forever barred, both at law and in equity, and no other proceedings, either at law or in equity, shall ever be sustained thereafter in any court whatever. Hence it would appear that if this grant does not come within

the confirmatory provisions of sections one and two of said act and no proceedings have been instituted under section six of said act (which evidently have not been done) it is forever barred by the provisions of section twelve. (Jesse Fish, 16 L. D., 550.)

What did Congress mean by the expression, "a league square," in the sections quoted, for it is only by ascertaining the legislative intent that the correct interpretation of that expression can be reached.

A careful and diligent search through the Supreme Court decisions with reference to Florida and Louisiana private land grants, has failed to reveal any decisions of that tribunal on the questions involved. It appears to be a new question for judicial investigation, and hence not only of unusual interest, but of unusual importance as well.

It is proper to remark in passing that the act in question is not one that confirms, or attempts to confirm, any grant or grants as made; were it such, the area of those grants would have to be determined by the same measurement used by the government making them.

This proposition is too well established to require a reference to authority in support of it.

This act therefore is independent and original legislation by Congress, with reference to the private grants therein mentioned, not because of any treaty obligations or in compliance therewith but manifestly for the purpose of quieting the disturbed conditions then existing in Florida with reference to unsettled and unconfirmed private claims. Without reference to the quantity of land originally contained in said grants as made, Congress seeks to confirm all those mentioned in the act to the extent of a "league square" and no more, and in determining what that extent is, the rule mentioned as obtaining in the confirmation of grants as made, does not of necessity control.

One of the rules laid down by Sutherland for the construction of statutes is as follows:

> Primarily—that is, in the absence of anything in the context to the contrary—common or popular words are to be understood in a popular sense; * * * and technical words, pertaining to any science, art or trade, in a technical sense. * * * * If the words of the statutes are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. * * * *. They should be construed with reference to their generally accepted meaning at the time of the passage of the act, and if reenacted, will be deemed to be adopted in their original sense. (Sutherland on Stat. Const., Sec. 247.)

Again:

> Words in common use and not technically employed, in a statute which is intended to be understood and practiced upon by the people, should be construed according to their popular meaning; *that such was the intention of the legislature is the only intendment that ought to be adopted.* (Id. Sec. 251.)

The word "league" used by Congress in the Act has a well known English and American meaning. Webster defines it as follows: "A measure of length or distance equal in England and the United States to three geographical miles; *used chiefly at sea.*"

It is defined in the Century Dictionary as "An itinerary unit not now in English used as a *marine league.*"

Worcester says of it that "It is a measure of distance used chiefly in reckoning *distances by sea,* being three geographical miles, or about 3.45 English or Statute miles."

It is evident, therefore, that the word "league" in the English and American sense, is a technical word, pertaining to the science of navigation and nautical measurements, and under the rule above quoted must be understood and applied in that sense. So applying it, the con-

clusion cannot be escaped that Congress did not use the word "league" in the English and American sense; otherwise, it would be in the attitude of directing the ascertainment of land areas by nautical measurement. Hence we must look further to ascertain the legislative intent.

Another rule for the construction of statutes, applicable to the one under discussion, is stated by Sutherland as follows:

> In order to ascertain the purpose or intention, if it is not clearly expressed in a statute, or that such purpose or intention will be carried into effect, the court will take notice of the history of its times when it was enacted. It is needful in the construction of all instruments to read them in view of all the surrounding facts. To understand their purport and intended application, one should as far as possible, be placed in a situation to see the subject from the maker's standpoint, and study his language with that outlook. Statutes are no exception. (Sutherland on Stat., Const., Sec. 300.)

This rule is cited by the Supreme Court in the case of the United States vs. Union Pacific Railroad Company, 91 U. S., 72, the Court saying, with reference to the construction of statutes, that "courts may with propriety recur to the history of the times when it was passed; and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it."

Again, the principle is laid down in the case of the United States vs. Freeman, 3 How., 556, that "statutes relating to the same person or thing, or the *same class of persons or things*, should be taken into consideration in construing a law." Applying these principles, it will be remembered with reference to the history of the times when the act under consideration was passed that Congress at that time and for a quarter of a century prior thereto had been engaged in the adjustment of private

land claims in the Territory of Louisiana acquired by the treaty of April 30, 1803, from France. From 1762 to October 1, 1800 that vast territory was owned by Spain, and a vast majority of the private land grants that under the treaty of April 30, *supra*, were to be protected by the United States, were Spanish Grants. It is also a well known historical fact that, with the exception of the period between 1736 and 1783, when it belonged to England, Florida from 1536 to 1819, when it was purchased by the United States, was a Spanish possession. From 1783 to 1800 then both Florida and Louisiana belonged to Spain. From 1762 to 1800, a period of thirty-eight years, all the grants made in Louisiana were Spanish grants, and from 1783 to 1819, a period of thirty-six years, all the grants made in Florida were Spanish grants. Now it appears that in disposing of the public domain in Louisiana the Spanish authorities were governed by a statute or ordinance, known as the "regulations of O'Reilley," the eighth article of which provided that no grant, in certain localities, should exceed one league square. (Chouteau's Heirs vs. United States, 9 Peters, 147; White's New Recopilacion, Vol. 2 p. 228-231.) This seems to be the beginning of the practice of limiting grants to a *league square* in the Spanish possessions of America. The Act of March 3, 1807 (2 Stat., 440) Section four, provides for the examination by the commissioners appointed for that purpose of claims to tracts "not exceeding the quantity of acres contained in a league square."

The confirmatory acts of April 12, 1814 (3 Stat., 122) of April 29, 1816 (3 Stat., 328) and of February 5, 1825 (4 Stat., 81) all declare that no person shall be entitled to more than a "league square." True, this legislation was concerning grants in Louisiana, but they were Spanish grants, of the "same class" as those confirmed by the act under discussion. Many of them were made at a time when both Louisiana and Florida were Spanish possessions, and in the absence of any definite information it would be reasonable to presume that a uniform system

prevailed in provinces contiguous to each other. It was known when this act was passed that a tract of land in Louisiana a league square contained 6002.50 acres, determined by the French unit of measurement, the *arpen* (James and Dennis Quinnilty, 1 L. D., 275.). See also testimony of Walker Gilbert, Maxfield Ludlow, Mr. Briggs, et al., in the claim of Gabriel Winter et al., American State Papers, pages 260 and 261.

The case of John Doe on Demise of Florentio Cummyns et al. vs. W. K. Latimer, et al., 2 Fla. Reps., 71, was the case of a grant in West Florida, petitioned and allowed for *800 arpents* of land, while a Spanish province, and it incidentally appears that other grants had been made in that province for *3500 and 7000 arpents.*

White's New Recopilacion, Vol. 2, p. 376, shows that the grants of the public domain in West Florida from 1801 to 1805 amounted to *99,884 arpents, 98 perches.*

Same authority, p. 378, refers to a grant of land, in East Florida, of 289,645 5-6 English acres, which, says the surveyor of the province who makes the report, amounts to *342.250-7 arpents.*

These references are made for the purpose of showing beyond all question or cavil, that in the Spanish possessions of Louisiana and West Florida the French arpent (or arpen) and not the Spanish *vara* controlled in the measurement of lands.

In dealing with the Spanish grants in Louisiana Congress knew that a league square meant 6002.50 acres, and when it came to dealing with Spanish grants in West Florida, it knew that the same rule obtained; hence, with its knowledge of the popular and general understanding of the meaning of the term, in the once Spanish province in that section, there is no reason to believe that it intended a league square to mean any less quantity of land in East Florida than it did in Louisiana and West Florida, or that a Spanish grant of a league square in one province should have any advantage over a similar grant in the other. Had such been the intent, it would certainly have been expressed in the language of the acts. As it is, the

confirmatory acts with reference to grants in Louisiana and Florida are substantially identical in language, and it will be kept in mind that they are of the same class.

In the particular act under discussion, it will be observed that certain grants in West Florida and those in East Florida are confirmed to the "extent of the quantity of a league square"; no distinction is made between the two divisions; the same quantity is confirmed in each.

Now, there is no question but that a "league square" in West Florida contained 6002.50 acres of land, and that Congress knew it when it passed the act in question, and if it had intended it to have any other or different meaning with reference to East Florida, it would have so stated in the act.

It would indeed be a singular construction, that would give to the expression a "league square" in the act under consideration one meaning in West Florida, and another in East Florida, in the absence of any expression to that effect in the context of the act.

The decision of your office that this question must be determined on the basis of the Spanish unit of measurement known as the *vara* cannot to my mind be sustained by the facts in the case. The *vara* as a unit of measurement does not appear to have been considered by or known to Congress in its dealing with Spanish land grants until after the acquisition of California and New Mexico, which was twenty years after the passage of the act under discussion; hence Congress could not have intended to use the *vara* or any other Spanish measurement because it had no knowledge of such measurement when this act was passed, and because that measurement had not been used by Spain herself in her Floridian provinces. But there is another weakness in that argument. It seems to have been the policy of Spain to adopt the unit of agrarian measurement used by the sovereignty that preceded her, and on her acquisition of East Florida she adopted the English unit of measurement.

White's New Recopilacion, Vol. 2, p. 261, sets forth a letter from Estrado, the Spanish Governor of East

Florida, to the Captain General of the Spanish provinces, dated July 29, 1811, in which he speaks of a certain grant that had been petitioned for, saying that "it would comprise, 6,500,000 acres, *English Statute measure, which is usual in this Province.*"

In conformity to that rule, this grant was petitioned and allowed for 5500 acres.

The conclusion, however, that a *Spanish league* was meant, is at variance with and repugnant to every fact and circumstance in the history of Spanish grants in the provinces mentioned, and in the legislation of Congress in relation thereto. Indeed, the authorities are conclusive on the question that in neither Louisiana nor the Floridas was the Spanish unit of measurements used. And it seems that when it was desired to reduce the acres mentioned in the East Florida grants to a more familiar unit of measurement, they were reduced to *arpens.* (See White's New Recopilacion, Vol. 2, p. 378, above cited.)

In view of the facts herein presented, I am unable to escape the conviction that in passing the act of May 23, 1828, *supra* Congress intended to deal with Spanish land grants in East Florida as it had with those in Louisiana and West Florida, and to confirm to the grantee in the former territory the same quantity of land it has confirmed to those in the latter; that a "league square" of land as understood by Congress, as well as by all those concerned, in reference to private claims, in either of those territories, at that time; meant a tract of land containing 6002.50 acres; that such was the generally understood meaning of that term; and that if Congress had intended the expression used in the act of May 23, 1828, *supra,* to have any special or different meaning, with reference to East Florida, it would have so expressed it in said act.

If, however, it should be contended the word "league" used in the act under discussion meant an "English league" of 3.45 English statute miles, then a "league square" would contain 11.9 square miles, or 7516 acres,

which is more than the number of acres contained in the claim here involved.

It follows, therefore, that this claim in question, containing, as shown by the survey, $5426\frac{86.46}{.82}$ acres, is less than a league square, and is confirmed by the first section of the act of May 23, 1828, *supra*.

Your office decision rejecting said claim, because not confirmed, is therefore reversed, and you are directed to patent said claim in accordance with the survey thereof.

The papers transmitted by your office letter "B" of April 30, 1890, are herewith returned.

Very respectfully,

HOKE SMITH,
Secretary.

COPIES OF LAWS OF FLORIDA REFERRED TO IN THIS BRIEF.

Thompson's Digest:

Sec. 2—Paragraph 2.—(Page 90)—It shall be the duty of the Assessors, so appointed and qualified in each county in this State, to proceed immediately after the first day of January in each and every year, to take down and assess the taxable property in his county as prescribed in this act; and on or before the first day of March, to make out three books in alphabetical order of all the taxable property in his county, one of which books he shall forward to the comptroller of the treasury, one other of said books he shall deliver to the sheriff of his said county, and the other book he shall deliver to the board of county commissioners of his said county: PROVIDED, that this present year the assessors in each county shall proceed forthwith, after having complied with the requirements of the ninth section of this act, to assess the taxable property in their respective counties, and shall make returns as prescribed in this section, on or before the first day of October.

Sec. 2—Paragraph 5.—(Page 91)—It shall be the duty of every person to render to the Assessor of taxes in the county in which such property lies, a correct list of all the taxable property he, she or they may own in said county, or may be possessed of liable to taxation, as provided in this act; which list shall contain an enumeration of all such property in his, her, or their possession, as aforesaid, within said county; and in the list of lands, a particular description of the situation and quality of the same, and to which class it belongs, and also such lots in any town, city or ville, with the description thereof and the improvements thereon, and such as are unimproved, also the amount of his, her, or their stock of goods in trade, on the first day of January, and of money loaned out at interest, shares of bank stock, and shares in incorporated companies, cattle, and all other property and

things subject to taxation, as provided for in this act, next preceding the time of rendering such list; and the assessor shall state in the last columns of his book, the total amount of taxes due from such person.

Sec. 2—Paragraph 6.—(Page 91)—In case any person shall neglect or refuse to deliver to the Assessor, within the county in which such property subject to taxation lies, a list of all the property he, she, or they may own or hold in possession, in said county, as prescribed in this act, within the time limited for taking such list of taxable property, the person or persons so refusing or neglecting, shall pay double tax on all such property as he, she or they may possess or hold in possession, according to the best information concerning the same which the Assessor can obtain; and every person rendering a list of his, her or their property liable to taxation, shall certify under oath that the list contains a true and correct description and account of all the property, real and personal, subject to taxation according to the provisions of this act, of which he or she is possessed in the county of———, either in his or her own right, or in right of his wife, or as agent, attorney, executor, administrator or guardian, or for the use of any other person, or persons whatsoever; and any person who shall possess taxable property in any county other than the one where he or she resides, and shall have no agent or attorney therein, shall transmit a list of such property, certified as aforesaid, to the Assessor of the county where such property lies, but if the county line shall run through any tract of land whereupon any person resides, the owner or proprietor shall give in the same and all the property subject to taxation thereon, to the Assessor of the county where such owner, proprietor, agent, etc., resides; and any person who shall refuse, or neglect to comply with any of the requisitions herein contained, shall be doubly taxed in manner aforesaid; nevertheless, it shall be the duty of the Assessor diligently to seek out and list all the property liable to taxation in his county, to the best of his skill and ability.

Sec. 2—Paragraph 8.—(Page 92)—The Assessor of taxes shall have the power, and it shall be his duty to assess any taxable property that may come into his county between the first day of January and the first day of March, under the same rules and regulations as are provided in other cases: PROVIDED, that such property shall not have been assessed in any other county of this State.

Sec. 2—Paragraph 9.—(Page 92)—If the Tax Assessor shall fail to execute his bond as prescribed in this act, or if executed it shall not be approved, or if from any cause whatever the taxes of any county in this State shall not be assessed agreeably to the provisions of this act by the first day of March, it shall be the duty of the Sheriff of such county to proceed forthwith from the date of such defalcation to assess and list the taxes of such county; and in all counties of this State wherein the taxes have not been assessed as prescribed in this act by the first day of March, it shall be the duty of the Sheriff of every such county where such defalcation has occurred, to proceed forthwith to have the taxes assessed in such county, in the same manner as the Assessors are required by this act to perform such duty, and to do and perform all such acts and duties as are herein prescribed for the County Assessors to do and perform and to receive the same emoluments and compensation as are allowed to County Assessors.

Sec. 3—Paragraph 1.—(Page 93)—The Sheriffs of the several counties in this State, shall be ex-officio collectors of the taxes in their respective counties, as well for county as State purposes; and each and every Sheriff in this State shall, before he proceeds to the collection of the taxes in his county, execute a bond, payable to the State of Florida with two or more good and sufficient securities, to be approved by the Board of County Commissioners of such county, in double the amount of the taxes assessed in such county agreeably to the tax-book returned; which said bond shall be in addition to such Sheriff's official bond, and shall be conditional for the

faithful collection and payment of the taxes for his county, as hereinafter prescribed and directed in this act, and shall be transmitted by the said Board of County Commissioners of such county, with the Assessor's bond, to the Comptroller of the Treasury of this State, to be filed for safe keeping in his office.

Sec. 3—Paragraph 2—(Page 93)—Each and every Sheriff or Tax Collector in this State, shall, before he enters upon the duties of his office, in addition to the oath prescribed by the Constitution, take and subscribe the following oath before a justice of the peace of such county: "I, A. B., do solemnly swear (or affirm) that I will faithfully collect the taxes assessed in county, and should it come to my knowledge that any property or subject of taxation in my county has not been assessed according to law, I will assess and collect the tax on the same, and pay over all moneys collected by me, as prescribed by law; and will well and truly discharge my duty as Sheriff or Tax Collector for my said county, as prescribed in this Act or may hereafter be prescribed by law, to raise a revenue for the State of Florida, to the best of my skill and ability. So help me God." Which said oath shall be endorsed on the back of the said Sheriff's bond, given and approved as aforesaid, and sent with said bond to the Comptroller of the Treasury of this State. And any Sheriff who shall collect any tax in his county before he shall have executed the bond, and taken the oath as hereinbefore described and directed, shall be deemed guilty of a high misdemeanor, and liable to indictment, and on conviction thereof, shall be fined in a sum not less than double the amount of taxes so improperly collected, and imprisoned not less than two months, at the discretion of the jury; and moreover, shall be dismissed from the office of Sheriff of his county, and shall never thereafter be capable of holding the office of Sheriff or Tax Collector in any county in this State.

Sec. 3—Paragraph 5.—(Page 94)—If the Assessor of Taxes, in any county in this State, shall have omitted or neglected to assess the taxable property, or any part

thereof, within his county, it shall be the duty of the Sheriff to assess and make due and full return of all such taxable property omitted or neglected to be assessed, and to collect and account for the same as other taxes are directed to be collected and accounted for by this act; and if for any cause whatever the taxable property of any county in this State shall not be assessed as directed in this act by the first day of March in each and every year, it shall be the duty of the Sheriff of every such county, where no assessment has been made, to proceed forthwith to assess and make return of all such property liable to taxation, in the same manner as the Assessor should have done, and to receive the same compensation that the Assessor was entitled to receive; and then to collect and account for the same as is provided in other cases for the collection and payment of taxes by this act.

Sec. 4—Paragraph 3.—(Page 96)—Any Sheriff who shall sell any real estate to satisfy any tax imposed by lawful authority, shall execute to the purchaser or purchasers thereof, a deed of conveyance, which deed shall be good and effectual to vest in the purchaser or purchasers all the right, title, interest, claim and demand whatsoever, of the person from whom such taxes are due, which he or she had in and to such real estate, either in law or equity, and deliver to him or them immediate possession thereof; and in every such deed the sheriff making the same shall recite the consideration, and that the real estate thereby conveyed was sold for taxes; but no deed, executed in manner aforesaid, shall be recorded until the expiration of one year from the date thereof, but may nevertheless be proved; and if the person whose estate may have been sold and conveyed as aforesaid, or his or her heirs, executors, or administrators, or his or her agent or his or her heirs, executors, or administrators, or his or her agent or attorney shall, within the year, tender to the purchaser or purchasers, or his, her, or their heirs, executors or administrators, or his, her, or their agent or attorney, or in case of his, her, or their absence from the State, then to the Sheriff who sold and con-

veyed such real estate, the consideration money paid for the same, and the amount of all subsequent taxes that shall have been paid on such real estate, with interest on all such sums from the dates of such payment at the rate mentioned in the twenty-fifth section of this act until such tender be made, then the deed executed for such real estate, thus sold and conveyed, shall be thereby vacated and made void, and the deed given up.

Sec. 4—Paragraph 4.—(Page 97)—In all cases where there shall be any property liable to taxation in any of the counties, and there shall be no owners or other person having charge of the same, it shall be the duty of the assessor to return the same from the best information that he can obtain, and such return shall be sufficient to authorize the sheriff to proceed to collect the taxes due on said property, in the manner specified in the following section.

Second Division—Chapter 1—Sec. 1. (Paragraph 1. —(Page 177)—No estate or interest of freehold, or for a term of years of more than two years, or any uncertain interest of, in, or out of any messuages, lands, tenements, or hereditaments, shall be created, made, granted, conveyed, transferred, or released, in any other manner than by deed in writing, sealed and delivered in the presence of at least two witnesses, by the party or parties creating, making, granting, conveying, transferring, or releasing such estate, interest, or term of years, or by his, her, or their agent thereunto lawfully authorized, unless by last will and testament, or other testamentary appointment duly made according to law; and that from and after the day and year aforesaid, no estate or interest, either of freehold or term of years, other than terms of years for not more than two years, or any uncertain interest of, in, to, or out of any lands, tenements, messuages, or hereditaments, shall be assigned or surrendered, unless it be by deed sealed and delivered in the presence of at least two witnesses, by the party or parties so assigning or surrendering, or by his, her, or their agent thereto lawfully authorized, or by the act and operation of law.

Sec. 4—Paragraph 2.—(Page 329)—The sheriffs of each county shall, at the expiration of their respective terms of office, turn over to their successors, by schedule, (taking their receipts for the same), all such writs and processes as shall remain in their hands unexecuted, and their successors in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and their securities, shall be liable to make such satisfaction, by damage and costs, to the party aggrieved, as he, she or they, shall sustain by reason of such neglect or refusal; and every sheriff, at the expiration of his said appointment, shall also deliver up to his successor, the bodies of all persons which he holds in confinement by legal process, with the precepts, warrants, or causes of such confinement; and the succeeding sheriff shall be empowered, and is hereby required to sell, and carry into effect any levy made by his predecessor in office, in like manner as the former sheriff could have done, had he continued therein; and shall make titles to the purchasers for all the property sold under execution, or other process, and not conveyed by his predecessor.

GENERAL STATUTES OF FLORIDA, 1906.

Sec. 1682 (1254) (page 679)—*Expiration of his Term.*—The sheriff shall, at the expiration of his term of office, turn over to his successor by schedule (taking a receipt for the same) all such writs and processes as shall remain in his hands unexecuted, and his successor in office shall duly execute and return the same; and in case any sheriff shall neglect or refuse to turn over such process in manner aforesaid, every such sheriff so neglecting or refusing, and his sureties, shall be liable to make such satisfaction by damage and costs to the party aggrieved as he shall sustain by reason of such neglect or refusal; and the succeeding sheriff shall be empowered, and he is hereby required, to sell and carry into effect any

levy made by any predecessor in office in like manner as the former sheriff could have done had he continued therein, and shall make titles to the purchaser for all the property sold under execution or other process and not conveyed by any predecessor.

Sec. 592 (page 339)—*Party recovering land must refund taxes paid and for improvements.*—When a recovery is had by any person or corporation of any land sold for taxes under this act, who has not, prior to the sale, paid the taxes thereon for which the land was sold, the person or corporation having such recovery shall pay to the party from whom recovery is had all taxes he has paid upon the said land at the time of sale, and the redemption money thereupon, together with all taxes he has paid since said sale, with eight per cent. interest thereupon; also the value of all permanent improvements made upon said land bona fide. The amount due for taxes paid, redemption money and improvements upon the land to be found upon trial or hearing when the recovery is had.

Sec. 1718. (1287) (page 700)—*Action for the recovery of real property.*—No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action.

Sec. 1719. (1288) (page 700)—*Actions founded on the title to real property.*—No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose titles the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defence in respect to which such action is prosecuted or defence made, or un-

less it appear that the title to such premises was derived from the United States or the State of Florida, within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of the title from the State or the United States.

Sec. 1720. (1289) (page 700)—*Possession by legal owner presumed.*—In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action.

1721. (1290) (page 700)—*Adverse possession under color of title.*—1. Continued occupation for seven years required.—Whenever it shall appear that the occupant, or those under whom he claims, entered into possesion of premises under the claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment for seven years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

2. *Definition of Possession and Occupation Required.*—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied, in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where (although not enclosed) it has been used for the supply of fuel, or of fencing timber for the purpose of husbandry, or for the ordinary use of the occupant; or

4. Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

1725. (1294) (page 703)—*Limitations.*—Actions other than those for the recovery of real property can only be commenced as follows:

* * * * * * * 4. *Within Four Years.*—Any action for relief not specifically provided for in this chapter.

LAWS OF FLORIDA, 1869 TO 1875.

Section 20, Acts of 1872, Chapter 1887 (page 44).—No suit or proceedings shall be commenced by a former owner or claimant, his heirs or assigns or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns or legal representatives to recover the possession of said lands unless such suit or proceedings be commenced within one year after the recording of such deed in the county where the lands lie, except upon the grounds that the said lands were not subject to taxation or that the taxes were paid or tendered, together with the expenses chargeable thereon before sale, and the recording of such deed shall be deemed such assertion of title or such entry into possession by the grantee, his heirs or assigns, as to authorize such suit or proceedings against him or them as for an actual entry;

PROVIDED, That infants, persons of unsound mind or under guardianship or imprisoned, may commence such suit or proceedings within one year after such disability shall cease.

Sec. 63, Acts of 1874, Chapter 1976. (Page 27)—No suit or proceeding shall be commenced by a former owner or claimant, his heirs or assigns or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns or legal representatives, to recover the possession of said lands, unless such suit or proceedings be commenced within one year after the recording of such deed in the county where the lands lie, except upon the grounds that the said lands were not subject to taxation or that the taxes were paid or tendered, together with the expenses chargeable thereon before sale, and the recording of such deed shall be deemed such assertion of title or such entry into possession by the grantee, his heirs or assigns, as to authorize such suit or proceedings against him or them as for an actual entry; PROVIDED, That infants, persons of unsound mind or under guardianship or imprisoned, may commence such suit or proceedings within one year after such disability shall cease.

Where land is bid off by the collector for the State, the tax certificate shall be issued by the collector to the State, in the name of the Comptroller, and if the land is not redeemed within the time specified by law, the State shall be entitled to a deed for the same to be issued by the county clerk in the manner provided by law, and said deed shall be issued to the State. The validity of any sale for taxes under this act, or of any title acquired by, through or under such sale, shall only be affected or questioned by alleging and proving that the property sold was not subject to taxation, or that the taxes had been paid before such sale, or that the property so sold had been redeemed acording to law.

Acts of 1879, Chapter 3099, Sec. 61. (Page 37).—No suit or proceeding shall be commenced by a former owner or claimant, his heirs or assigns, or his or their legal representatives, to set aside any deed made in pursuance of any sale of lands for taxes, or against the grantee in such deed, his heirs or assigns, or legal representatives, to recover the possession of said lands, unless such suit or proceedings be commenced within three years after the recording of such deed in the county where the lands lie; PROVIDED, That infants, persons of unsound mind, or under guardianship, or imprisoned, may commence such suit or proceedings within one year after such disability shall cease. When a recovery is had by any person or a corporation of any land sold for taxes under this act who has not prior to the sale paid the taxes thereon for which the land was sold, the person or corporation having such recovery shall pay to the party from whom recovery is had all the taxes he has paid upon said land at the time of the sale, and the redemption money thereupon, together with all taxes he has paid since said sale, with eight per cent. interest thereupon; also the value of all permanent improvements made upon said land bona fide. The amount due for taxes paid, redemption money and improvements upon the land, to be found upon the trial or hearing when the recovery is had.

WILSON CYPRESS COMPANY *v.* DEL POZO Y MARCOS.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 135. Argued January 19, 1915.—Decided March 15, 1915.

Although the jurisdiction of the Federal court may have been invoked solely on account of diverse citizenship, if the object of the suit is to quiet title to a grant of the former sovereign, depending for its completeness on a treaty and on laws of the United States and acts of Federal officers thereunder, this court has jurisdiction to review the judgment of the Circuit Court of Appeals.

Although the amount of land patented to the grantee of a former sovereign may have exceeded the amount confirmed by the act of

Congress and have been predicated upon a survey and limitation to the amount confirmed, the patentee has a taxable interest in the land that can be reached for proper taxation by the State.

Where the lower courts erroneously sustained complainant's contention that the lands involved were not taxable because never segregated from the public domain, and therefore did not pass upon the other contentions also urged by complainant as sufficient to sustain the title and which involved questions of local law and the weighing of conflicting evidence, this court will not on finding that the lower courts erred on the question of taxability finally pass on the other questions, but will reverse the decree and remand the case to the lower court for further proceedings in accordance with the opinion.

202 Fed. Rep. 742, reversed.

SUIT to quiet title brought in the Circuit Court for the Southern District of Florida by appellees, whom we shall call throughout complainants and the appellant defendant.

The bill alleges that the complainants are the heirs at law of Miguel Marcos, a lieutenant in the Spanish Army; that he was granted by the lawful authorities of the King of Spain on the eighteenth of October, 1815, 5,500 acres of land in the then Province of East Florida, on two banks of a creek which empties into the St. John's river about two miles north of Long Lake; that the grant was confirmed to his widow, Teresa Rodriguez, in her own right and for and on behalf of her children by the United States to the extent of a league square; that the grant was an inchoate right to said tract, under the laws of Spain called a first title or permit to occupy the land and, after occupancy and proof thereof, to secure a complete or royal title, but before such title issued Spain ceded East Florida to the United States, who, by the eighth article of the treaty between the United States and Spain, occupied the position of Spain with regard to this and like grants of land and were pledged to confirm title thereto; that the lands were neither surveyed nor segregated from the public domain during the sovereignty of Spain; that the same were wild and uncultivated, were never in the actual occu-

pancy of the grantee or of his widow and children and the title thereto at the time of the cession of the Floridas passed to the United States, subject to the equitable claim of the complainants.

The succession of complainants to the original grant is traced by the bill and it is alleged that soon after the cession of the Floridas to the United States, Teresa Rodriguez, applied to the board of land commissioners appointed to examine and report on claims to lands in East Florida for the confirmation of the grant and it was reported by the board to Congress as a valid grant and its confirmation recommended. That thereafter Congress, by an act approved May 23, 1828, c. 70, 4 Stat. 284, confirmed it to the extent of a league square, to be located within the limits of the original claim and bounded by sectional lines, and to be in quantities of not less than one section. That under the sixth section of the act of Congress confirmation of the grant was required to be accepted as a final settlement of the claim or the claim to be brought before the judge of the Superior Court for the district of East Florida within one year from the passage of the act; that the latter proceeding was not had and that by the act of Congress the title to the land was confirmed to the extent of one league, to be located within the bounds of the original grant.

That it was held by the judicial and executive branches of the Government that a league square was 4,438.68 acres. That by the laws then in force in the Territory of Florida it was the duty of the Surveyor General of the Territory to make the survey of the lands confirmed to complainants' ancestor and make certificate thereof and file the same in the land office of the United States in said Territory. That among the acts of Congress extending to said Territory was the act of March 3, 1807, by the terms of which it was made unlawful to take possession of, survey or cause to be surveyed or settle upon any lands ceded or secured to the United States by any treaty with a foreign

nation, or any land, claim to which had not been recognized and confirmed by the United States, under a penalty of forfeiture of the right, title and claim to such lands. That the ancestors of complainants were residing in Cuba on the twenty-third of May, 1828, and they and their descendants have since that date resided there and none of them have resided or been in the United States since the passage of the act of May 23, 1828, confirming the grant to the extent of a league square. That the United States never surveyed and segregated the lands as confirmed, as held by the Land Department of the United States, and the confirmees had no power to cause such survey to be made. That the lands embraced in the grant were surveyed as public lands by the United States in 1847, and such survey was approved May 15, 1848. A certified copy of the official plat of survey is attached to the bill and it is alleged that the lands were held by the Land Department of the United States to be public lands and were so treated from 1831 to February 12, 1894, upon which date the grant described in the bill was by the Land Department of the United States declared to be a valid, confirmed private grant to Teresa Rodriguez and ordered to be patented, and thereafter it was so patented to her, her heirs, assigns and legal representatives, and the lands described as section 37, township 19, south of range 28, and section 41, township 19, south of range 29, according to the plat of the public surveys made by the United States, and for the aggregate of 5,486.46 acres. That until such recognition of the title of complainants and those under whom they claim from and after May 23, 1828, complainants were excluded from the possession of the lands, and the United States had both the legal title and possession and right of possession of them and any occupancy of them by any other than the United States was a mere trespass; that before February 12, 1894, complainants and those under whom they take title were not able to take possession of

the lands because the United States claimed the entire grant as public lands.

The bill then sets out the asserted title of the defendant to have been derived from a sale to one John Starke on July 5, 1852, by the sheriff and ex-officio tax collector of Orange County, Florida, based upon a pretended execution for certain unpaid taxes alleged to have been assessed "upon the 'lands supposed to belong to Teresa Rodriguez,'" and the said sheriff attempted to deed to said Starke "'all the right, title and interest of Teresa Rodriguez and others'" in and to said tracts of land. That the said sale and deed are absolutely null and void because (1) it was alleged to be an assessment upon the single tract containing 5,480 acres and to be payable for the years 1845 to 1851, both inclusive, during which time the legal title and possession were in the United States; that the lands were expressly exempt from taxation by the statute of the State of Florida during those years, which declared that the act for the assessment and collection of taxes should not be construed to embrace lands belonging to the United States. (2) That the amount of taxes assessed was in excess of what could have been lawfully levied. (3) That proper notice of the sale was not given; (4) nor was the land sold in the parcels required. (5) That the deed was not properly executed, it having no subscribing witness and its record being wholly unauthorized.

Like invalidity is asserted against the tax and sale of the land for the years 1867, 1868 and 1869 assessed to John Starke, and conveyed by the sheriff to one William Mills. In addition it is alleged that no statute in Florida authorized a tax collector to make a tax deed upon a sale for the non-payment of taxes, such being the duty of the county clerk of the county wherein lay the lands. That the assessment and tax sale and deed to William Mills were made in execution of a conspiracy by him and Robert

C. Patten and one George C. Powell to deprive complainants of their title; that Mills never took possession of the lands but attempted to convey them to Powell; that Powell entered only upon section 9 (a part of section 37, above named) of said township 19, range 28, and made some improvements to complainants unknown and cut some timber thereon. That he exercised no other acts of ownership and those were continued but for a short time and "were not uninterrupted by continued occupancy for seven years" and were subsequently abandoned by him; that the possession was not sufficient either in character or duration to enable him to claim the benefit of the statute of limitations against any action brought by complainants; that complainants were precluded from bringing any action because the lands were held and claimed adversely by the United States and held to be public lands of the United States. Other tax assessments and sales are alleged and conveyance and title traced through them to the defendant, the Wilson Cypress Company, but the latter has never had such possession as would bar a right of entry by complainants. It is alleged that complainants tried to get a recognition of their title but only succeeded on June 18, 1894.

There are many other allegations which assert the validity of complainants' title and the invalidity of that of defendant, and that on June 26, 1895, the United States quit-claimed and patented to the legal representatives of Teresa Rodriguez the lands granted to Marcos and which had been surveyed as section 37, township 19, range 28, and section 41 of the same township, range 29, containing 5,486.46 acres. That the patent was duly recorded in the records of the United States and in the public records of Lake County, Florida, and the grantor of defendant and defendant had knowledge of it when the conveyance was made. That after the issue of the patent complainants were for the first time entitled to the possession of the

lands and from such date they became subject to taxation, and thereafter complainants sent their agent to Florida and took possession of the lands and have continued ever since to claim and have exercised acts of ownership over them.

It is alleged that the tax deeds referred to in the bill are fair upon their faces and are clouds upon the title of complainants and hinder them in the full enjoyment of their property and should be canceled and discharged from the public records.

It is further alleged that defendant will aver that no patent was necessary to evidence complainants' title and that by the confirmation of the grant title vested in the grantee and his legal representatives, but complainants allege that under the facts set out the United States did not relinquish title until the twenty-sixth of June, 1895, and before the approval of the survey of the lands granted the legal title was in the United States and the claim of complainants attached to no particular land.

There are other allegations of what the defendant will aver as to possession and right and it is then alleged that there never has been such possession by defendant as would establish an adverse holding.

An injunction was prayed against the defendant enjoining it and its officers from exercising acts of ownership over the land or from disturbing the possession of complainants; that the tax deeds and other deeds set out in the bill be held to have been executed without authority of law and that they be annulled and canceled.

The answer is as voluminous as the bill. It negatives many of the allegations of the bill either by denials or opposing allegations and asserts that the grant from Spain and its confirmation by the United States passed a complete title to the land. It also asserts the validity of the title acquired through the tax deed; alleges the insufficiency of the bill in equity; sets up the statute of limita-

tions, and charges laches and estoppel, the complainants in the bill having permitted large expenditures for care and improvement of the property by defendant. And it also puts in issue the relationship of complainants to Marcos and Teresa Rodriguez and denies that they are entitled to maintain the bill.

Upon proof being submitted, and after hearing, it was decreed that complainants were descendants and heirs at law of Teresa Rodriguez, the grantee in the patent of the United States hereinbefore referred to, were entitled to "an undivided interest in and to the lands" in controversy (which were specifically described) "and for themselves and as representatives of all persons claiming title to said lands through the said Teresa Rodriguez, her heirs and legal representatives," were "entitled to maintain this bill to remove cloud from" the lands.

The decree recited the tax deeds and the lands which they purported to convey, and adjudged that the deeds, having been based upon assessments made prior to the issue of the patent and while the validity of the grant to Marcos was denied by the United States, were absolutely null and void and a cloud upon the title of Teresa Rodriguez and her legal representatives and heirs at law and set aside.

And it was further decreed that defendant had no title or interest in the patented lands and that it and all persons claiming under it were enjoined from setting up any title under the tax deeds or from entering upon or holding possession of the lands or any part thereof.

The decree was affirmed by the Circuit Court of Appeals. The opinion of the court was as follows (202 Fed. Rep. 742): "The lands in controversy were not segregated from the public domain, and the title thereto remained in the United States until the issuance of the patent; therefore they were not taxable by the State of

Florida at the several times they were listed for taxes and sold for nonpayment thereof."

Mr. John C. Cooper for appellant.

Mr. William W. Dewhurst, with whom *Mr. Joseph H. Jones* and *Mr. John C. Jones* were on the brief, for appellees.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

The tedious volume and prolixity of the bill are directed to establish that Miguel Marcos, the ancestor of complainants, received a grant from the Spanish authorities, not becoming complete in his descendants, the complainants, until June 18, 1894, and until such time the lands which the grant embraced were not subject to state taxation and that, therefore, the deeds issued to defendant in consequence of such taxation are void. And of this view were the two lower courts, the one in consequence entering a decree to quiet the title of complainants against the deeds, and the other affirming such decree. This appeal was then taken.

A motion is made to dismiss the appeal on the ground that the jurisdiction of the court was invoked solely because the complainants were aliens and the defendant was a citizen of the United States. This is a narrow view of the bill. It seeks to quiet the title of complainants to a tract of land commencing in a grant from Spain, depending for its completeness upon the treaty with Spain and laws of the United States, and the action under those laws by the officers of the Land Department of the United States, and it especially relies on those laws to defeat defendant's claim of title and to have it removed as a cloud upon that asserted by complainants. Indeed, there

is scarcely a contention of complainants which does not primarily or ultimately depend upon the laws of the United States. The motion to dismiss is, therefore, denied.

The first proposition on the merits is the character of the grant from Spain to Marcos. Complainants contend, as we have seen, that it was an inchoate or incomplete grant. The defendant, *per contra*, insists that it was confirmed as a complete and perfect title by the force and effect of the treaty between the United States and Spain.

It is well here to repeat some of the allegations of the bill that their scope and effect may be understood. It alleges the action of the Board of Land Commissioners reporting the grant to Congress for confirmation and the several acts of Congress relating thereto, especially the act of May 23, 1828, c. 70, 4 Stat. 284. That the grant was under the laws of Spain, "called a first title or permit to occupy the land and, after occupancy and proof thereof, to secure a complete or Royal title." It is, however, further averred that before a perfect title could be obtained Florida was ceded to the United States, who by the eighth article of the treaty pledged itself to confirm the title; and that to secure such confirmation Teresa Rodriguez, widow of Marcos, applied to the Board of Land Commissioners and the Board reported the grant to Congress as valid and recommended its confirmation, and that thereafter Congress, by the act of May 23, 1828, confirmed it to the extent of a league square, to be located within the limits of the original claim and bounded by sectional lines and to be "in quantities of not less than one section."

This apparently left nothing to be done but to segregate the land by a survey, but the bill alleges that the grantees were required to accept the confirmation as a final settlement or bring their claim before the judge of the Superior Court for the district of East Florida.

This was not done, it is alleged, but it is again alleged that the title was confirmed to the extent of one league square, to be located within the bounds of the original grant.

Notwithstanding they had a grant confirmed to them of a possible league square, possession was not taken, it is alleged, because under the act of March 3, 1807, to have taken possession would have forfeited their right, and that it was not until February 12, 1894, when their title was recognized by the Land Department of the United States, that they were able to assert ownership of the land. In other words, that until such date the United States did not relinquish its title and possession of the lands; that the obligation to confirm grants of lands assumed by the United States by the treaty with Spain was political in character, and to be discharged as the United States deemed expedient, and as to the grant to Marcos the United States retained possession and title thereto from March 23, 1828, to the issuance of the patent; that before the approval of the survey of the lands granted to Marcos the legal title was in the United States and the claim of complainants attached to no particular lands.

It will be observed, therefore, that the basis of the contention of complainants is that their ancestor, Marcos, received an inchoate title to an unspecified tract of land "two miles north of Long Lake on both banks of a creek emptying into the St. John's river, if this tract of land could be identified," and because it was not identified, even by the survey approved by the Land Department, counsel say that "the title to the lands in controversy, therefore, whether Marcos held a first cession or a royal title, is held under the United States and not under Spain."

This, however, we assume, is but another way of stating that complainants had no interest in the land that they could assert or that the State of Florida could tax until the United States issued its patent, and yet the United

States has done no more than recognize the title derived from Spain and as derived from Spain. It is true there were at first some doubts and hesitation, but ultimately the recognition was complete, following and in pursuance of the confirmation of the Marcos grant by the act of May 23, 1828, and upon a survey made as early as 1851. At whose instance the survey was made does not appear. Section 1 of the act of May 23, 1828, requires the land confirmed by it "to be located by the claimants, or their agents, within the limits of such claims or surveys . . . which location shall be made within the bounds of the original grant, in quantities of not less than one section, and to be bounded by sectional lines." Some uncertainty arises from § 2. It provides that no more than the number of acres contained in a league square shall be confirmed within the bounds of any one grant; and no confirmation shall be effectual until a full and final release of all claim to the residue contained in the grant. And something is made of the provision by complainants to refute the contention of defendant that the act was an absolute confirmation of the grant, but it certainly cannot be contended that it took all power from the act and left the grant without any foundation whatever; and we are brought back to the consideration that a valuable property was confirmed to complainants which only needed a survey to identify it, and, when surveyed, was segregated from the public domain and subject to the taxing jurisdiction of the State. The survey was made, we have seen, in 1851 under contract with Benjamin A. Putnam, surveyor general. The act of June 28, 1848, c. 83, 9 Stat. 242, directed that surveys be made as soon as practicable of the private claims or grants which had been duly confirmed situated in the State of Florida. It is probable that the survey was made in obedience to this direction. The field notes of the survey and the official plat thereof were approved by the surveyor general June 20, 1851,

and the patent recites that the description of the land therein given is taken "from the approved field notes of the survey thereof as executed by M. A. Williams, a deputy surveyor, in the month of January, 1851, under his contract with Benjamin A. Putnam, surveyor general of Florida, of the 19th of October, 1850." Indeed, the patent rests alone on the survey as a description and segregation of the land, the grant of which was confirmed by the act of Congress of May 23, 1828, as claim No. 22, recommended for confirmation December 16, 1825, by the Board of Commissioners in pursuance of the act of Congress of March 3, 1823.

All the conditions of a taxable property existed, unless there be merit in the contention of the complainants that the survey of 1851, upon which the patent was predicated, was of no effect unless and until approved by the Commissioner of the General Land Office. This contention has been earnestly pressed upon our attention, but is untenable. It has no support in any statute or regulation that was in force at the time. The confirmatory act of May 23, 1828, and the act of June 28, 1848, were both silent upon the subject, and in the absence of some applicable special provision the general statute relating to public surveys was controlling. The general statute was then embraced in the act of May 18, 1796, c. 29, 1 Stat. 464, and its amendments, and was afterwards incorporated in Chapters 1 and 9 of Title 32 of the Revised Statutes, more especially §§ 2223 and 2395. It expressly dealt with the survey of private land claims as well as of public lands, but contained no requirement that the survey of either be approved by the Commissioner. This is apparent upon an inspection of the statute and is shown by two decisions of this court, one relating to the survey of a private land claim resting upon a confirmed Mexican grant and the other to the survey of public lands. *Frasher* v. *O'Connor*, 115 U. S. 102, 115; *Tubbs* v. *Wilhoit*, 138 U. S.

134, 142–144. In both cases the court approvingly referred to a decision of the Secretary of the Interior, in the latter case quoting the Secretary of the Interior as follows: "There is nothing in the act of 1796, or in the subsequent acts, which requires the approval of the commissioner of the general land office before said survey becomes final and the plats authoritative. Such a theory is not only contrary to the letter and spirit of the various acts providing for the survey of the public lands, but is contrary to the uniform practice of this department. There can be no doubt but that under the act of July 4, 1836, reorganizing the general land office, the commissioner has general supervision over all surveys, and that authority is exercised whenever error or fraud is alleged on the part of the surveyor general. But when the survey is correct, it becomes final and effective when the plat is filed in the local office by that officer." And it was added: "This practice was changed by the Land Department in April, 1879, and communicated in its instructions to surveyors general on the 17th of that month. It was not until after such instructions that the duplicate plats filed in the local land offices were required to be previously approved by the commissioner of the general land office." It follows that the land granted and confirmed was fully identified by the survey of 1851, the field notes and plat of which are shown in the record. Of the office of the patent it is enough to repeat what was said in *Beard* v. *Federy*, 3 Wall. 478, 491: "In the first place, the patent is a deed of the United States. As a deed, its operation is that of a quit-claim, or rather of a conveyance of such interest as the United States possessed in the land, and it takes effect by relation at the time when proceedings were instituted by the filing of the petition before the Board of Land Commissioners. In the second place, the patent is a record of the action of the government upon the title of the claimant as it existed upon the acquisition of the

country." In *Boquillas Cattle Co.* v. *Curtis*, 213 U. S. 339, 344, such a patent was described "as a confirmation in a strict sense." See also § 3 of the act of May 23, 1828.

It will be observed, from the allegations of the bill, which we have taken the trouble to repeat, that the foundation of the title of complainants is a grant from Spain, which was reported as valid by the Board of Commissioners of the United States, recommended by such Board for confirmation and confirmed by the Act of Congress of May 23, 1828, to the extent of one league, "to be located by the claimants"; that subsequently (1851) a survey was made under a contract of the Surveyor General of Florida which has been accepted as the segregation of the land and set forth in the patent, and that the sole basis of the patent is the title so derived and confirmed.

It is true, as we have stated, that the Commissioner of the Land Office in 1890 refused to issue a patent, deciding that the claim had been "surveyed in Tp. 19, S., Rs. 28 and 29 E., for 5,426.82 acres." The grounds of his decision were these: the claim was before Congress when the act of February 8, 1827, c. 9, 4 Stat. 202, was passed but that that act only confirmed those claims which were under the quantity of 3500 acres and provided "for the survey of this [Teresa Rodriguez] and other claims, exceeding in area 3500 acres." Referring to the act of May 23, 1828, it was said that by its sixth section those holding claims like that under consideration might secure a confirmation thereof by prosecuting the same in the courts. It was further said that "patents in this class of cases are based on some confirmatory act of Congress or upon a confirmation of some tribunal, created by Congress for that purpose." Considering that there was no confirmation by Congress and no decision of any tribunal created by Congress, the Commissioner declined "to patent the same for the want of proper evidence upon which to base such action." A review of the decision and

action was invoked and the attention of the Commissioner was directed to § 1 of the act of May 23, 1828, and a confirmation claimed thereunder on the ground "that its survey contains a less quantity than a league square." To this the Commissioner answered that the "grant was made by Spanish authority and must be understood to mean a grant of 5,500 acres according to the measurement used by Spain in measuring grants of this character. . . . A 'league square' by this measurement contains 25,000,000 varas, or 4438.68 English acres.

"The Rodriguez claim, as before stated, has been surveyed so as to embrace 5,426.82 acres, or 988.14 acres in excess of a Spanish 'league square.'

"Said act of 1828 provided a method by which claims not confirmed by its first section might be confirmed by its second section. This second section required the claimants, who accepted its provisions, to release the land in excess of a league square.

"No release of the 988.14 acres herein referred to is found on file here. . . .

"The Rodriguez claim not having been confirmed, I must decline to take up the same with a view to the issuance of a patent therefor."

An appeal was taken to the Secretary of the Interior and a decision rendered by him February 12, 1894. The Secretary stated that the lands within the limits of the grant have been surveyed in Twp. 19 S., Rs. 28 and 29 E., in Florida, that it was presented to the Board of Land Commissioners in Florida for 5,500 acres, and contained according to said survey 5,486.46 acres. The opinion then recites the history of the grant and the steps which had been taken for its confirmation, defined a league square to contain 6,002.50 acres of land and that in accordance therewith the grant was petitioned and allowed for 5500 acres.

In answer to the view expressed by the Commissioner

that a Spanish league was meant, it was said that the conclusion was "at variance with and repugnant to every fact and circumstance in the history of Spanish grants in the provinces mentioned [Louisiana and the Floridas] and in the legislation of Congress in relation thereto." It was hence held that a "league square" of land as understood by Congress in the act of May 23, 1828, meant a tract of land containing 6,002.50 acres and that it followed, therefore, that the Rodriguez claim "contained, as shown by the survey, less than a league square and is confirmed by the first section of the act of May 23, 1828, *supra*." The decision of the Commissioner was reversed and that officer was "directed to patent said claim in accordance with the survey thereof."

Both the Commissioner and the Secretary proceeded upon the theory that the survey as approved by the surveyor general in 1851 was effective, if the grant was confirmed by the first section of the act of 1828.

We have been at pains to cite at length from these decisions to show how little stood in the way of the complete assurance of complainants' title and that its foundation was the direct confirmation of it by the act of May 23, 1828, and that the grant needed definition only by a survey, which was made as we have seen, in 1851. This survey was referred to by counsel for complainants, by the Commissioners of the Land Office and the Secretary of the Interior and in the patent, it being made the foundation of the latter. The case, therefore, becomes in principle like *Wisconsin Railroad Company* v. *Price County*, 133 U. S. 496; *Witherspoon* v. *Duncan*, 4 Wall. 210; *Northern Pacific R. R.* v. *Patterson*, 154 U. S. 130; *Maish* v. *Arizona*, 164 U. S. 599.

This disposes of the primary proposition in the case, to-wit, that complainants had a taxable interest in the granted lands; but assuming the contrary, defendant yet insists that complainants are not entitled to the relief

which they pray. There are other contentions as well, urged respectively by defendant and complainants, upon which the courts below did not pass, and we are brought to consider what disposition should be made of the case in view of such contentions.

The first of the contentions relates to the title of defendant, which has its foundation in a sale for taxes by the State of Florida alleged to have been assessed for the years 1845 to 1851, both included, and a deed from the sheriff to one John Starke (1852), and subsequently an assessment to the latter for taxes and a sale for his delinquency, title ultimately reaching defendant through mesne conveyances.

The validity of the tax deeds is attacked by complainants, they asserting that the deeds were not preceded by a valid assessment, nor indeed any assessment, nor executed in accordance with the laws of the State, nor (as to some of them) by the proper officer. On these contentions, as we have said, the courts below expressed no opinion. Their solution depends upon testimony somewhat voluminous and not very satisfactory, of which there is no analysis either by the master or by the trial court or by the Court of Appeals.

The statute of the State, it is agreed, in 1845 to 1851 required the assessors of the counties "to take down and assess the taxable property in his county" and on or before the first day of March in each year "to make out three books in alphabetical order of all the taxable property in his county, one of which books he shall forward to the comptroller of the treasury, one other of said books he shall deliver to the sheriff of his said county, and the other book he shall deliver to the board of county commissioners of his said county."

The act provided that in default of an assessment by the assessors the sheriffs of the counties should assess and list the taxes for their respective counties and to proceed

to have the property therein assessed in such manner as the assessors were required to perform such duty.

The chief clerk of the comptroller's office, upon being called as a witness by complainants, testified that he found duplicate tax rolls of 1845 to 1851, inclusive, except for the year 1847, which he could not find. To his certain knowledge the rolls had been in the office for thirty years. The rolls were certified by the assessor as correct so far as his knowledge extended. Some of the rolls were not endorsed as filed. The witness testified that he could add nothing to the identity of the rolls other than the certificates and that he could not determine whether the roll of 1845 was made in accordance with law or not. And further that the "book" (roll) was alphabetically arranged to the extent of the first letter in the surnames and that the land was designated according to its quality as first, second or third rate and assessed respectively at three-fourths, one-half and one-quarter of a cent an acre, but the number of acres was not given nor a description of the land.

To the question whether there was property assessed to Teresa Rodriguez he answered, "So far as the question of whether any lands are entered there opposite the name of Teresa Rodriguez is concerned, I will say that I am unable to find that particular name. But I will state further that it is impossible for me to declare that the property of Teresa Rodriguez is not assessed, for the reason that property is entered on this book, following after the word 'same' in a number of instances, and for that reason I don't know who 'same' was intended to be. In a number of instances 'same' appears there, and 'ditto.' In making the ditto they used two ditto marks. Wherever the word 'same' appears a name immediately precedes it, but where the ditto marks (or dots, the intention of which I do not know) just precede those, no name appears."

There is other testimony equally confusing as to the

roll of 1846. He testified that some portions of it were rotted out. But how far this affected the roll does not clearly appear. And as to the roll of 1848 he testified that it was so mutilated and torn that he was unable to arrive at any conclusion as to how the lands were assessed therein; and further that he was unable to give the names that were entered between the letter P and the letter S, for the reason that by decay they had become so dim and stained that he was unable to make them out. The testimony was clearer as to the roll of 1849 and the name of Teresa Rodriguez did not appear thereon. The witness testified that Teresa Rodriguez' name did not appear on the roll of 1850, but he was not able to say whether her property was attempted to be assessed or not; that he was only prepared to say that her name was not on the roll. The certificate to this roll stated "that the foregoing assessment of State taxes corresponds exactly with that contained in the book filed by me in the office of the Judge Probate, and were retained by me, John Simpson, tax assessor and collector." It may be observed in passing that John Simpson, as sheriff and tax collector, levied upon and sold to John Starke lands "supposed to belong to Teresa Rodriguez." There is some presumption that he proceeded upon a knowledge of the records and the requirements of the law. We have seen, the statute required the sheriffs to make assessments if the assessors failed to make them.

On cross-examination the clerk of the comptroller's office repeated that he was unable to determine if Teresa Rodriguez' lands had been assessed, that "in the absence of specific descriptions it would be impossible to determine a question of that nature."

Testimony was offered on the part of defendant to the effect that the court house of Orange County, where the lands are situated, was destroyed by fire in 1868 or 1869 and one only of the books of record was saved, it not being in the court house at the time of the fire. It was a mis-

cellaneous record—separate volumes of deeds, mortgages and miscellaneous matter not then being required. There was nothing in its index which covered tax sales or tax assessments.

It will be observed, therefore, the testimony as to assessments is somewhat uncertain and confused and that the courts below made no attempt to analyze or explain it, their view of the case making it unnecessary.

There are other contentions equally dependent upon testimony. For instance, defendant asserts that the record shows that complainants were guilty of laches, more than twelve years having elapsed from the date of the patent to the filing of the bill, and that besides the suit is barred by the statute of limitations. And, further, that one of the parties in the tax title took possession immediately upon his purchase of the lands in 1872 and remained in possession until 1882, cultivated a portion of the lands, cut timber therefrom and exercised other acts of ownership. That his successor in title succeeded also to the possession, holding it until his sale in 1884 to the Florida Colonization Company, the grantor of the defendant, from which, in 1890, defendant received the title and possession.

It is contended that during all such time complainants neither paid nor offered to pay taxes, that the other parties did, the defendant successively from 1890, and that it also made other expenditures; that complainant asserted no claim to the lands against it and let twelve years elapse after patent was issued before bringing this suit.

The courts below rejected these contentions. The trial court seemed to have arrived at its conclusion by disregarding the possession, whatever it was, which was held by defendant's predecessors in the title or its possession prior to the issue of the patent. "It makes no difference," the court said, "what the occupation or possession may have been while the title to the property was in the United States, and it is not considered that the possession during

such time can be resorted to to determine whether or not the property was, after the issue of the patent, in the actual possession of the defendant through its agent sufficient to legally bar a right to maintain a bill to remove cloud from title."

We think the learned court erred in this. The continuity of possession was a factor to be considered,—we do not say determinative. The evidence of numerous witnesses seems to conflict upon the character and extent of such possession, an analysis of which can better be made in the first instance by the master or the trial court than by an appellate court.

There are other contentions, besides, which were not passed upon. The validity of the deed from the sheriff to Starke is questioned because, it is asserted, it has neither subscribing witnesses nor evidence of having been acknowledged, and, it is contended, under the laws of Florida a certified copy of a deed is not admissible in evidence as proof of the execution or contents of the original, if the record has not been made upon the evidence of execution required by the statute, citing *Kendrick* v. *Latham*, 25 Florida, 819. Indeed, the contention is even that a deed without subscribing witnesses does not convey the land described for a term of more than two years, citing *Hart* v. *Bostwick*, 14 Florida, 162, 173; *Neal* v. *Gregory*, 19 Florida, 356.

To this defendant opposes the contention that the laws of Florida did not require subscribing witnesses to a deed from a sheriff made in execution of a levy upon the property for the collection of taxes, and that, further, even if so, there was a right to receive a deed from the successor of the sheriff and that, therefore, an equitable title was conveyed to Starke which was subject to taxation and to sale upon his delinquency.

We do not pass upon the contention nor intimate an opinion of the other contentions we have mentioned or

which are presented by the pleadings. We refer to them to show that on account of the view of the courts below on the taxability of the lands they omitted to pass on a number of important issues, some of which require a consideration of testimony, and some—it may be all—an examination of the local laws and decisions, as dependent on such testimony. And, we repeat, a consideration of such testimony should be made in the first instance by the trial court. *Chicago, Milwaukee &c. Ry.* v. *Tompkins*, 176 U. S. 167; *Owensboro* v. *Owensboro Water Works Co.*, 191 U. S. 358.

Decree reversed and cause remanded for further proceedings in accordance with this opinion.